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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Orrick, Judge

San Francisco, California  
Wednesday, August 15, 2018

## **TRANSCRIPT OF PROCEEDINGS**

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1 **Wednesday - August 15, 2018**2 **2:47 p.m.**3 **P R O C E E D I N G S**4 **---000---**5 **THE CLERK:** Calling Civil Matter 16-2787,  
6 Huawei Technologies Company Limited, et al., versus Samsung  
7 Electronics Limited, et al.

8 Counsel, please step forward and state your appearance.

9 **THE COURT:** So I'm hoping you-all noticed and will  
10 follow the direction of the prior six cases who were all  
submitting to the tentatives.

11 Why don't you introduce yourself for the record.

12 **MR. BETTINGER:** Thank you, Your Honor. Mike Bettinger  
13 along with my colleagues today Dave Giardina, Doug Lewis -- who  
14 will all be presenting -- Nate Greenblatt, and Irene Yang.  
15 Also with us today from Huawei Steven Geiszler and Emil Zhang.16 **THE COURT:** Welcome.17 **MR. VERHOEVEN:** Good afternoon, Your Honor. Charles  
18 Verhoeven on behalf of Samsung. And with us today is Victoria  
19 Maroulis, Alan Whitehurst, Melissa Baily, Carl Anderson, Ray  
20 Zado, Marissa Ducca, Brian Mack, Sam Stake, and Iman Lordgooei.21 And we have so many people just because we're not sure  
22 exactly what issues are going to come up, and we wanted to have  
23 the most knowledgeable people here for Your Honor.24 **THE COURT:** Well, that's so kind of you. I think it's  
25 also representative of how much paper and how many motions I

1 was dealing with, and I will be so interested at the time of  
2 trial to see how you're going to present a case clearly and  
3 effectively to a jury of your peers.

4 So I've given you the tentative rulings. There is one  
5 other thing I wanted to mention before you start out, because I  
6 had one other question that occurred to me this morning.

7 You saw for the most part I addressed motions on what I  
8 perceived the merits to be as opposed to not striking them on  
9 the basis of timing and procedural arguments because I thought  
10 they were plausible explanations given by the opposing party on  
11 those grounds.

12 The one argument that I haven't -- that I didn't have a  
13 response to concerns Samsung's motion for summary judgment on  
14 the '105 patent that Huawei mentioned the Motorola simulations  
15 as a reduction to practice for the first time in its opposition  
16 brief. And so at whatever point during the course of the  
17 proceeding I'd like to hear what Huawei's response to that is  
18 because that would make a difference in the way that I'm  
19 thinking about that issue.

20 **MR. BETTINGER:** Yes, Your Honor.

21 **THE COURT:** So with that -- and you've seen the other  
22 questions that I had, and I'd like you to argue anything that  
23 you want to. I am -- we're going to be out of here in two  
24 hours unless we take a break.

25 So with that, we'll start, Mr. Bettinger, with you.

1                   **MR. BETTINGER:** Yes, and we'll start with your first  
2 question on --

3                   **THE COURT:** Just a second. Mr. Verhoeven?

4                   **MR. VERHOEVEN:** I'm sorry. Just point of order. So  
5 we're going to take it issue by issue; correct?

6                   **THE COURT:** And if Mr. Bettinger groups, you know,  
7 three things together, then you can respond to those three  
8 things.

9                   **MR. VERHOEVEN:** Okay.

10                  **THE COURT:** And do it any way that makes --

11                  **MR. VERHOEVEN:** Right.

12                  **THE COURT:** -- the most sense to you, but you'll be  
13 taking turns.

14                  **MR. VERHOEVEN:** Exactly. I was thinking it would be  
15 more useful for Your Honor if we join the issues together  
16 rather than --

17                  **THE COURT:** Yes, absolutely. Any way that works best  
18 for you-all will work best for me.

19                  **MR. VERHOEVEN:** Thank you, Your Honor.

20                  **MR. BETTINGER:** So, Your Honor, thank you for the  
21 time. Thank you for the effort that went into it. We know the  
22 effort that went into the briefs, so that effort that went into  
23 this.

24                  So we thought we'd start with your first question on  
25 divided infringement since you asked it first.

**THE COURT:** Okay.

**MR. BETTINGER:** We did prepare a handout with some slides to follow along if need be. We're not going to go through all of these. We have directed points, but there are page numbers that we can refer to.

**THE COURT:** All right. I was expecting this and that's great.

**MR. BETTINGER:** Okay.

(Pause in proceedings.)

**MR. BETTINGER:** So, Your Honor, starting with your first question on divided infringement, it comes up in two of the patents, our patents, the '613 and the '587. We've got some slides on that at page 119 of our presentation.

And I think to set the stage for the discussion, if we could go to Slide 121 and just take a look at the claims because the issue here is these are what are called method and product claims --

(Pause in proceedings.)

**MR. BETTINGER:** Oh, yeah.

I'm sorry. A housekeeping matter. Could we get the screen turned on so we can post them? Thank you, ma'am. My apologies.

**THE COURT:** That's okay. I'm looking at page number 121, so you don't have to stop.

**MR. BETTINGER:** Okay.

1       So the claims on the '613, there's two claims, a method  
2 claim, and it requires receiving by user equipment and  
3 receiving by user equipment. Those are the relevant claims.

4       Claim 5, which is an apparatus claim, user equipment is  
5 what it's claiming. So it's the UE. In this case it's called  
6 user equipment, the device, the phone. So that's what it's  
7 comprising. It's just a single user equipment.

8       Similarly, if you look at page 122, for the '587 patent,  
9 the method claim is receiving -- the UE receives a downlink  
10 control information and then the UE feeds back the ACK/NACK  
11 information based on what it's received. In Claim 9 it's a  
12 user equipment. So it's just the product, the device itself.

13       **THE COURT:** All right.

14       **MR. BETTINGER:** We're not talking a situation where  
15 you have to go outside anything. It's just those  
16 self-contained phones, and that's where the functionality lies.

17       And that *Uniloc versus Microsoft* case that we cited in our  
18 papers and is restated there on Slide 123, that's the way  
19 patentees can structure claims so that you capture infringement  
20 by a single party.

21       In *Uniloc* I think it was an algorithm that incorporated  
22 means for receiving e-mails, and so the e-mails had to be sent;  
23 but the way the claims were written, it was just the receiving  
24 of the e-mails and the court said -- the Federal Circuit said,  
25 "Yeah. That's fine. That's the way you can draft a claim."

1 So that's the way these claims were drafted.

2 So you don't get into a divided infringement argument at  
3 that point because it's all being done within this one device.  
4 It's the phone. It's the one phone here. The claims don't  
5 require the network. They require a UE that is receiving  
6 information perhaps from a network. So they're written from  
7 the perspective of the UE.

8 But if we were to get to the next issue, which is the  
9 products themselves, which I think was what your question was  
10 directed to, what if you have a product claim, can you even  
11 have this direct infringement argument with a product claim as  
12 opposed to a method claim where you can -- and I think you  
13 wanted the most recent case law on that --

14 **THE COURT:** I'm always happy with it.

15 **MR. BETTINGER:** -- to help you with that.

16 So at Slide 124 what we've presented is there's a case out  
17 of the Eastern District of Texas a couple of years ago that was  
18 affirmed by the Federal Circuit citing *Akamai*. *Akamai* is a  
19 case that has had a number of lives up in the Federal Circuit.  
20 But divided infringement applies only to method claims and  
21 that's the teaching there. It was affirmed by the  
22 Federal Circuit. That was a case by Judge Schroeder out of the  
23 Eastern District of Texas.

24 We've also at Slide 124 cited the *Arcella* -- or  
25 *Arcelormittal* case out of District of Delaware. That was

1 Judge Robinson. And there the issue was discovery related, and  
2 she said given that the divided infringement only applies to  
3 method claims -- again citing the Fed. Circuit's *Akamai*  
4 decisions -- there's no need even for the discovery.

5 So when you're in a situation where you've got a product  
6 claim and the product is all contained within a single device,  
7 divided infringement doesn't even enter the picture.

8 There is one other body of law just to be complete,  
9 Your Honor, and that you can have a system claim. And there's  
10 a case called *Centillion* out of the Federal Circuit where it  
11 required a user -- the claims required that the user perform  
12 some functions and that the back-end servers perform some  
13 functions.

14 So there you have got a system. It's not a contained  
15 unit. And the question is -- it was a claim of infringement by  
16 use of the entire distributed system. And so in that case,  
17 which is a little bit out there, you could apply divided  
18 infringement to a use situation with a system claim, but  
19 there's never been one that we know of, and there's not been  
20 one cited, that has been applied to an apparatus claim where  
21 all the elements are contained within that particular  
22 apparatus.

23 At Slide 125 we have set out the claim language in the  
24 *Centillion* decision, and it shows you the elements there.

25 So I believe that answers the questions you had on that

1 particular issue.

2 There is the *Grecia* case out of the Federal Circuit just a  
3 couple months ago, which I have a copy if Your Honor wants it,  
4 which talks about how limited *Centillion* is on divided  
5 infringement for a system claim when it's a claim of use, but  
6 that's the only other decision we know of. There's none that  
7 we've been able to find or that have been cited to us where you  
8 have that divided infringement for an apparatus claim.

9 **THE COURT:** Okay. All right.

10 Mr. Verhoeven? Or who's going to respond to that?

11 **MR. VERHOEVEN:** Ms. Ducca.

12 **MS. DUCCA:** Good afternoon, Your Honor. Marissa Ducca  
13 on behalf of Samsung, and I'll try to make this very quick.

14 I'm going to start with your second question, which is:  
15 If it is inapplicable as a matter of law, is an argument  
16 properly presented in a *Daubert* motion?

17 I want to call attention to the actual opinions that our  
18 expert rendered. They're actually contingent opinions. So his  
19 opinions were entirely technical, and what he was saying is  
20 that if the Court were to make a determination at some point in  
21 the future that there is divided infringement, then here are my  
22 technical opinions.

23 We're not asking you to make that determination, and  
24 Huawei is not asking you to make that determination. They're  
25 just asking you to exclude those opinions.

1       Our expert just put that in there as a contingent  
2 decision. So if Your Honor does not want to make that decision  
3 at this time, you don't have to; and our expert can't render  
4 those opinions without that decision because it is an issue of  
5 law, and we admit that it's an issue of law.

6       **THE COURT:** Okay.

7       **MS. DUCCA:** To briefly address the issue of product  
8 versus apparatus versus system claim, we don't disagree with  
9 any of the case law that Mr. Bettinger cited. We do believe  
10 *Centillion* is the leading case in this area.

11       There is a question of system claim versus product and  
12 apparatus claim. There's no magic language to whether a system  
13 claim, if you say it is a system, it becomes a system claim; or  
14 it is a product, it becomes a product.

15       The question is: What does the claim language say? So  
16 you look at the claim language. You see how the patent  
17 prosecutor drafted it. Did they draft it as an action term  
18 where somebody has to actually do something, or did they draft  
19 it from the perspective of a single product or device, as  
20 Mr. Bettinger was speaking of?

21       And just to briefly -- I'm going to use your slides. If  
22 you can put 121 back up.

23       And if you notice for Claim 5, the first limitation says  
24 (reading):

25       ".... circuitry configured to receive a service sent by

1 a base station."

2 It's talking about particular circuitry. It happens to be  
3 the circuitry that receives the service.

4 But then the next sentence says (reading):

5 "... the service being sent in one or more subframes."

6 That's an action term. It's saying that the service is  
7 sent from something: The base station. It doesn't say  
8 something, for example, "the service which is received from the  
9 base station." It says it is being sent, an action verb.

10 So that's an example of claim language where the  
11 prosecutor chose to frame the language from both sides. Just  
12 because it says "a user equipment" and not "a system" does not  
13 make it not a system claim.

14 **THE COURT:** Okay.

15 **MS. DUCCA:** All right.

16 **THE COURT:** I understand.

17 **MS. DUCCA:** And that's all I have.

18 **THE COURT:** Okay. Thank you.

19 **MS. DUCCA:** Thank you, Your Honor.

20 **THE COURT:** All right. Mr. Verhoeven.

21 **MR. VERHOEVEN:** It's our turn. Thank you, Your Honor.

22 I would like to address briefly the antitrust ruling or  
23 tentative.

24 **THE COURT:** Yes.

25 **MR. VERHOEVEN:** And I also have some slides.

These are -- most of the meat of this issue has been marked confidential by the parties, and so I may be just referring to pages here so that we don't have it in the public record.

**THE COURT:** That's fine.

(Pause in proceedings.)

**MR. VERHOEVEN:** So first, Your Honor, I'd like to address the two bullets from your tentative, and in particular -- and I'm not going to use any numbers here --

**THE COURT:** Okay.

**MR. VERHOEVEN:** -- the issue about the starting rate that was your first bullet.

**THE COURT:** Yes.

**MR. VERHOEVEN:** It is Samsung's contention, we believe the evidence shows, that the rate at issue that we're talking about was maintained, it wasn't just a starting rate, but it was maintained throughout the negotiations between the parties all the way up to the filing of the complaint in this case.

And if you look at in Slides 3 and 4, Your Honor, and 5, we have just a high-level summary. The details are in the record in evidence, but this rate we're talking about was insisted upon by Huawei throughout all of the pre-compliant negotiations. And they have claimed that they lowered that rate, but that is not correct. There's a factual dispute about that.

1       And, for example, in August of 2000 -- well, let me say  
2 this: One of the things that was happening during these  
3 negotiations was that each time the parties came together to  
4 talk, the assumptions provided by Huawei changed. So, for  
5 example, SEP plus everything, not just SEP, changed to SEP  
6 only, changed to Huawei only, not cross-license, changed back  
7 to everything, cross-license.

8       And this is just one example. There was a lot of  
9 different things changing all the time. There was one thing  
10 that didn't change and that's the rate. The rate always stayed  
11 the same. It was always that rate.

12       And so in August 2014, that was the rate. In December,  
13 there was a significant agreement reached between Huawei and  
14 another party, which the rate -- in which the rate was not even  
15 in the same solar system is what was demanded.

16       If you go to Slide 4, after that, the same rate was  
17 insisted upon by Huawei even after that. It was expressed,  
18 Your Honor, in a number and not a percentage, but the number  
19 was separating out a -- can I say the difference in phones? --  
20 it was a separating out the latest technology system from the  
21 prior ones with respect to which the industry had already been  
22 moving on, and the rate was applied to the difference. So it  
23 was effectively the rate -- the same rate applied to the  
24 technology that is the later iteration that the parties are  
25 actually going to be using in the future. It was the same

1 rate --

2           **THE COURT:** Okay.

3           **MR. VERHOEVEN:** -- and it was expressed as a number.

4 But if you take the number -- if you take that number -- the  
5 way they got the number was they took the exact same rate and  
6 they applied it to the difference in price between a phone that  
7 had the latest and a phone that had the previous; and that  
8 represents, according to them, the value of the phone of that  
9 amount.

10           So they're making all kinds of changes. They were saying  
11 SEP only. They're saying worldwide. And so now they said,  
12 "Let's just do the latest technology," but they used the same  
13 rate throughout. There was no going down on the rate. That  
14 rate was applied to that difference, and that's how they got  
15 the number.

16           And then they changed the number again in -- well, I don't  
17 know if I have it on the slide, but they changed the number  
18 again to a slightly lower number expressed as a monetary  
19 amount, not as a percentage. And that was the same  
20 calculation. They told us later that the way they came up with  
21 that was to take that exact same rate they've always been  
22 insisting on -- the prior rate was using a competitor's  
23 cellular telephone technology -- and they just switched it to  
24 Samsung's. So it's the same calculation using different  
25 pricing. The first one was -- would have been our technology.

1       So the point I'm making is -- and I'm not sure exactly  
2 where Your Honor was coming from with the comment in the first  
3 bullet -- this is not a situation where there's a headline rate  
4 and then there was dramatic downward movement. That's not the  
5 case.

6       **THE COURT:** Okay. I understand what your point is.

7       How about the second point?

8       **MR. VERHOEVEN:** The second point, if you go to -- this  
9 is antitrust injury; correct, Your Honor?

10      And so I start --

11      **THE COURT:** And it's really the concept of isn't this  
12 just a fight between two companies?

13      **MR. VERHOEVEN:** No, it's not.

14      **THE COURT:** Okay.

15      **MR. VERHOEVEN:** So --

16      **THE COURT:** That's what I want to hear.

17      **MR. VERHOEVEN:** All right. So if you go to Slide 7 --  
18 actually, I would rather just talk to you about it, but that's  
19 where I am, Slide 7. We've got to talk about what's the  
20 relevant market. That's the devil here. What's the relevant  
21 market?

22      We claim in our case that the relevant market is the  
23 technology that gets incorporated into the standard. So you've  
24 got 10 SEPs, each of those -- that get accepted in. Those are  
25 technological functionality for which there's no alternative

1 anymore. And so there's a monopoly on each of those things.

2 Okay? SEP. That's why they call it SEP; right? But we're  
3 talking now not about the patents but about the technology that  
4 gets adopted into the standard that corresponds to those  
5 patents, and that is the relevant market we claim.

6 Their summary judgment motion does not attack our relevant  
7 market. It doesn't say it's bad. It doesn't say we can't  
8 prove it. It accepts it because it doesn't even challenge it.

9 So that's the relevant market we're dealing with,  
10 Your Honor. Samsung is a customer of that relevant market.  
11 Samsung is a purchaser, is a purchaser of the right to use that  
12 technology.

13 So we're not, Your Honor, a competitor at all in this  
14 case. We're competitors in the real world, of course; but this  
15 is a very specific claim and it's talking about specific  
16 technological marketplaces, and we're a purchaser of the rights  
17 to use that -- the monopoly they have on that now because they  
18 have a patent on something that's been incorporated into the  
19 standard.

20 And so the injury is not just a competitor Samsung to  
21 another competitor; it's an injury where we are the consumer  
22 and we're being harmed. And so all of their arguments about  
23 competitor on competitor are misplaced in this particular  
24 scenario, Your Honor.

25 And if I could go to Slide 9, Your Honor, what does Huawei

1 say in response to the fact that we are a direct purchaser and,  
2 therefore, the law they're citing is inapplicable? This is  
3 what Huawei said on page 5. It starts with the phrase  
4 (reading):

5 "The issue is not whether Samsung, as a 'direct  
6 purchaser' in the alleged relevant technological markets,  
7 is presumptively a proper plaintiff with antitrust  
8 standing, but rather whether the conduct Samsung complains  
9 of will 'harm the competitive process and thereby harm  
10 consumers,' rather than merely harming 'one or more  
11 competitors'..."

12 They refuse to engage. They just say we're competitors.  
13 That's the issue. The issue isn't that we're direct  
14 purchasers. The issue is we're competitors. They don't  
15 challenge the fact that we're a direct purchaser under our  
16 definitions of relevant market. They just said, "Look over  
17 here, Your Honor."

18 So they have nothing to say about this. And this does  
19 constitute -- when you're a direct purchaser, it does  
20 constitute cognizable antitrust injury.

21 In Slide 10 -- I'm not going to belabor this because in  
22 the interest of time, Your Honor -- we cite Judge Koh's  
23 decision -- and it's on the slide. I'm not going to take the  
24 time to read it, Your Honor -- finding antitrust injury in  
25 basically the very similar factual scenario.

1       And where else? There's also -- well, there's several  
2 cases, Your Honor, and they're in our papers and they're in my  
3 slides here.

4       I want to make one more point, though, quickly, before I  
5 run out of time, and that is, you didn't address this in your  
6 tentative, but their papers, we're talking about the antitrust  
7 industry, they keep saying there's no industry because we  
8 haven't paid anything yet. And that's their primary argument,  
9 nothing's happened yet. The injunction hasn't issued in China  
10 yet. We haven't paid the exorbitant prices that we allege  
11 they're demanding yet. So there's no injury.

12       But that's contrary to law, Your Honor. Threatened --  
13 it's not whether it's actual or threatened. Threatened is  
14 covered under the law, and we cite to some stuff on Slide 11  
15 here.

16       And they don't seriously contest that if they actually did  
17 all this stuff, and our allegations are assumed to be true,  
18 that there wouldn't be a massive effect on competition  
19 generally. All the way down, not just us as a direct  
20 purchaser, but all the way down to the consumer there would be  
21 massive injury. If injunctions issued inappropriately killing  
22 20 percent of one of the party's -- certain products of one of  
23 the parties, that would be a massive injury.

24       If none of that happened but the exorbitant rates were  
25 forced to be paid, that would get passed down to the ultimate

1 consumer. And their expert admits that's injury to  
2 competition, it's injury to the consumer.

3 So we believe we have shown antitrust injury. I have  
4 slides on other issues, but those are the two issues you raised  
5 in your tentative and I'll ask if you have any question.

6 **THE COURT:** Okay. Great. Thank you, Mr. Verhoeven.

7 **MR. VERHOEVEN:** Okay.

8 **MR. GIARDINA:** Good afternoon, Your Honor. My name's  
9 David Giardina on behalf of Huawei. I've got the requisite  
10 book.

11 **THE COURT:** Good.

12 **MR. GIARDINA:** So if I can hand that up to you.

13 **THE COURT:** Thank you.

14 (Pause in proceedings.)

15 **MR. GIARDINA:** So, Your Honor, it won't come as any  
16 surprise that we think you got this issue right in your  
17 tentative, and I don't think anything that Mr. Verhoeven has  
18 suggested this morning should -- or this afternoon should  
19 change the outcome on this.

20 The starting point for analysis of the antitrust issue is  
21 an issue that Mr. Verhoeven didn't join this afternoon, and  
22 that is that it's incumbent on Samsung to have evidence that  
23 Huawei's FRAND commitments were false at the time that they  
24 were made. And I think for the reasons that we've set forth in  
25 the papers, that would be the prerequisite in order to

1 establish that Huawei obtained, acquired, or maintained  
2 monopoly power in the alleged relevant markets by means of  
3 exclusionary conduct.

4 None of the chronology about the parties' negotiations  
5 that Mr. Verhoeven went to -- or went through suggests that  
6 Huawei's FRAND commitments at the time that they were made were  
7 fraudulent and false and that Huawei had no intention of  
8 honoring those commitments.

9 The proof of that, for lack of a better term, is the fact  
10 that Huawei throughout the course of negotiations and, indeed,  
11 in this court itself has sought to have a neutral determine  
12 what the appropriate rate is.

13 Huawei, you know, can't be alleged to have intended from  
14 the beginning to evade its FRAND commitments when it said to  
15 Samsung the very time that it's making the offers that  
16 Mr. Verhoeven says are so abhorrent, was saying to Samsung,  
17 "Well, let's let an arbitrator decide this. Let's let a court  
18 decide this." And, indeed, we came to this court and asked the  
19 Court initially to take up that issue.

20 All of that conduct is utterly inconsistent with the  
21 notion that Huawei intended to evade its FRAND commitments from  
22 the very beginning, and there's no evidence in this record that  
23 would permit a reasonable jury to decide otherwise.

24 **THE COURT:** You'd agree with Mr. Verhoeven that  
25 Huawei's offers have been consistent at that rate? Is that

1 what you're telling me?

2           **MR. GIARDINA:** I would not, Your Honor. I think, you  
3 know, that's not set forth in the papers here and had it been,  
4 we would have demonstrated that the undisputed facts  
5 demonstrated that Huawei's offers were declining consistently  
6 over time.

7           But even if one accepted, you know, for the purpose of  
8 argument that there was a disputed issue as to that fact, it  
9 would be insufficient to find that there was adequate  
10 exclusionary conduct; and that's, you know, the case law that  
11 we cite that addresses whether one can establish that a  
12 contractual commitment was false at the time it was made by  
13 establishing that there was some subsequent, even willful,  
14 breach of that.

15           And all the conduct that he's describing, which we believe  
16 to be mischaracterized, would at most go to proving that there  
17 was some subsequent breach of these commitments. It wouldn't  
18 demonstrate that they were false at the time that they were  
19 made. As a matter of law, one can't draw that inference from  
20 them. So I think that that addresses the exclusionary conduct  
21 issue.

22           With respect to antitrust injury, I think there is some  
23 level of confusion here, and this is always true because the  
24 concept of antitrust injury is a confusing one. In effect our  
25 argument isn't one of standing. It is that the -- it's really

1 another variant on the argument that there's no exclusionary  
2 conduct.

3       What we're saying and the *Rambus* case that we cite is  
4 really saying is that for something to be anticompetitive and  
5 exclusionary, it has to affect more than an individual party,  
6 and that's what here in the relevant markets it doesn't. The  
7 only person -- the only party that could be damaged as a result  
8 of this in the relevant markets is Samsung and Samsung alone,  
9 and that's not enough to establish that there's been harm to  
10 the market overall; and, therefore, you can't establish  
11 essentially that there's anticompetitive conduct leaving aside  
12 whether or not they're a direct purchaser, which we, of course,  
13 concede as they've defined the market. We think there are  
14 problems with that definition; but for the sake of summary  
15 judgment, we've not challenged it.

16       You know, Mr. Verhoeven is absolutely correct that under  
17 Section 26, you know, you can establish standing on the basis  
18 of threatened injury.

19       One issue that Samsung doesn't join us on in the papers is  
20 the fact that, you know, there's no plausible scenario in which  
21 actual injury occurs here. You know, we've represented to this  
22 Court consistently from the outset of this case to today that  
23 if Samsung would commit to a neutral determination, be it by  
24 arbitration or in a judicial proceeding in some jurisdiction,  
25 that Huawei would withdraw its injunction actions in China.

1       So, you know, ultimately what would happen here is if an  
2 injunction ever came to be enforceable in China, Samsung would  
3 have the option of getting a neutral determination of what it  
4 should, in fact, pay, and their expert admitted that that would  
5 not harm anyone. That would not harm competition and,  
6 therefore, you can't have harm to competition as the record  
7 stands here.

8           Your Honor, if you don't have any other questions, I'll  
9 save our time.

10          **THE COURT:** Okay.

11          **MR. GIARDINA:** Thank you.

12          **MR. VERHOEVEN:** Just a couple minutes, Your Honor.

13          **THE COURT:** Sure.

14          **MR. VERHOEVEN:** On the issue of intent, if you read  
15 the papers, that seems to be the main issue, that -- there's  
16 many issues, but that seems to be a big issue that Huawei is  
17 pointing to and they're saying, hey, we don't have any evidence  
18 that's dated prior to the date of adoption of the standard and,  
19 therefore -- of intent and, therefore, we lose as a matter of  
20 law. That's basically our argument.

21           And I have -- there was a multiprong response to that.

22           First, intent is not required in Section 2. I'll go into that.

23           Second, their underlying theory that you can't prove bad  
24 intent with postdated conduct related -- that goes to probative  
25 of your pre-X date conduct is false. It's just not true under

1 the law.

2 And perhaps the best argument or the easiest comeback to  
3 that is they're relying on their offer to arbitrate showing  
4 their good intent. Well, that didn't happen before the  
5 adoption of standards.

6 And what we have is a -- we have -- you're supposed to  
7 look at the facts in toto when you're looking at intent. So  
8 even if it was required, Your Honor, you look at everything,  
9 and so that's our second point, Your Honor.

10 So let me go really quickly to that. And if you go to  
11 Slide 15, the entire gist of their motion, based on the  
12 *Broadcom* decision, Your Honor, is to say that's the only way  
13 you can show an antitrust violation, is the *Broadcom* decision  
14 from the Third Circuit, but that's not true. There's a  
15 refusal-to-deal doctrine that's completely irrelevant to that.

16 And here, we just quote the Sherman Act. There's no  
17 intent requirement. The only thing that's -- the two elements  
18 to show a violation of Section 2 is possession of monopoly  
19 power in the relevant market -- this is Slide 16 -- and the  
20 willful acquisition or maintenance of that power through  
21 exclusionary conduct.

22 The *Broadcom* case itself, Slide 17, refers to the fact  
23 that you could have a refusal-to-deal case. That wasn't the  
24 facts before it, but it even acknowledged you could have that  
25 type of case too.

1       And then finally on Slide 18, invoking Judge Koh again,  
2 Your Honor, in a highly fought case involving SEPs, an  
3 antitrust claim, the Court found that there was a refusal to  
4 deal or there was a cause of action to state it. And so what  
5 they're asking you to do is something that would be completely  
6 inconsistent with what happened in that case.

7       Our case fits in with those fact circumstances, and we  
8 pointed that out in our opposition.

9       And the reply, if you look at Slide 20, Your Honor, the  
10 only place this is dealt with is in Footnote 2 of their reply.  
11 It's a big footnote but basically I'll synthesize it for  
12 Your Honor. They're basically saying the refusal -- there is  
13 no refusal to deal here as a matter of law because what  
14 Judge Koh was talking about was refusal to provide any terms,  
15 as though that was a requirement to establish a cause of action  
16 for refusal to deal, but that's not true.

17       And the next page I'll cite you, Your Honor, page 21, to  
18 some cases that expressly say that. You can be refusing to  
19 deal if you give exorbitant offers that can't reasonably be  
20 accepted, and that's exactly what we have here.

21       So I'll give you an example. Huawei itself has  
22 consistently said, Your Honor, that -- well, let me take a step  
23 back.

24       Your Honor is familiar with the concept of cumulative  
25 royalty?

1                   **THE COURT:** Yeah.

2                   **MR. VERHOEVEN:** So that would be, say you don't have  
3 any IP and you want to make a phone. You had to have licenses  
4 from everybody. What's the cumulative stack, what's the  
5 cumulative amount of that? And there's a big concern in the  
6 industry that that's going to get too high and it's going to  
7 kill the industry because everything will get too expensive.

8                   And Huawei's publicly taken the position repeatedly that  
9 the entire cumulative royalty stack should be 5 to 6 percent  
10 that's public, and later they've modified it to 5 percent.  
11 Yet, look at the rate they've consistently demanded of us. If  
12 you just do the math, I can't talk about the math, but if you  
13 just do the math, which is pretty easy to do, then the  
14 percentage of the cumulative rate that would translate into  
15 doesn't even arguably -- it's not even arguable it's so high.

16                  And so that's a refusal to deal is what we're saying, and  
17 it's a fact issue. And so we cite these cases in response --  
18 we didn't get a chance to cite anything because it was a reply  
19 brief -- showing that, you know, if you're just ridiculous,  
20 that's a refusal to deal.

21                  So if Your Honor accepts all of that, their entire motion  
22 is beside the point because there is no intent requirement for  
23 us to survive and assert a Section 2 claim if we have a refusal  
24 to deal as well as the *Broadcom* issue.

25                  So moving really quickly to the *Broadcom* issue, here we

1 are at Slide 25, the *Broadcom* case, which they say is not  
2 binding precedent, identified one way in which you could assert  
3 an antitrust claim under Section 2. Not the exclusive way, one  
4 way.

5 And they do say under prong two -- well, first of all,  
6 Huawei concedes there's a triable issue of all of the elements  
7 identified in *Broadcom* except number two, patent holder's  
8 intentionally false promise to license essentially proprietary.

9 And in the reply we said, look, this is a fact issue.  
10 This isn't a summary judgment issue. This is a fact issue.  
11 Intent is a fact issue. It's always been a fact issue. It  
12 goes to the jury.

13 And in response they concede that. So on Slide 26 here, I  
14 cite you to page 2 of their reply where they say, quote,  
15 (reading) :

16 "Samsung is correct that issues of intent are  
17 generally factual in nature."

18 And so their position, Your Honor, is you should grant  
19 summary judgment because no reasonable jury could ever find  
20 that there was this requisite intent. That's their summary  
21 judgment motion. And we have oodles of documents and  
22 testimony -- I have some laid out in these slides; I don't have  
23 time to go through it -- showing that there is inappropriate  
24 intent.

25 I'll let -- I'm going to just submit on these slides

1 because I don't have enough time, Your Honor; but just to hit a  
2 couple of highlights, on Slide 29 we lay out a timeline that  
3 shows that throughout the process in which Huawei was demanding  
4 this rate, they were making representations to the ETSI  
5 standards organization that they wouldn't do what they were  
6 doing. That's evidence of bad intent.

7 We've got Slide 31, which Your Honor cited in the antisuit  
8 injunction order, evidence that their act conduct is just going  
9 to be used against -- is a bargaining chip to get more than  
10 they would otherwise be able to get through negotiations.

11 Next slide, Slide 32. This is all under seal by Huawei,  
12 but I took Mr. Song's deposition, Your Honor. He's the chief  
13 legal officer of Huawei. Interestingly, he's not a lawyer.  
14 But he testified under oath from the bottom of his heart, he  
15 testified that Huawei had a particular intent, which I'm not  
16 going to go into because it's under seal, that is completely  
17 inconsistent with the actions that they have taken seeking  
18 injunctive relief. Very similar to what Mr. Ding publicly  
19 said.

20 And then, of course, we've got -- I've got a bunch of  
21 slides here just showing the negotiations themselves, which we  
22 rely on as showing inappropriate intent.

23 So we would submit, Your Honor, on that issue that, number  
24 one, it's undisputed it's a factual issue; number two, it's not  
25 even required, they can't come with any case law that says it's

1 required; and, number three, there's disputes of fact, and so  
2 summary judgment should not be appropriate on that ground.

3 Unless Your Honor has any further questions --

4 **THE COURT:** Thank you.

5 **MR. VERHOEVEN:** -- I've gone over my time.

6 **THE COURT:** No.

7 **MR. VERHOEVEN:** My internal time.

8 **THE COURT:** Your internal time. I'm sure you went  
9 over your internal time, Mr. Verhoeven.

10 All right. Let's --

11 **MR. GIARDINA:** May I?

12 **THE COURT:** Sure.

13 **MR. GIARDINA:** So, Your Honor, I'm just going to, you  
14 know, try to do these serially, these arguments.

15 The first issue that they raise is that intent is not a  
16 requirement under Section 2. Of course, it is under an attempt  
17 claim, and there's been a lot of ambiguity as to whether they  
18 are pleading a monopolization claim or an attempt claim, but  
19 it's an explicit requirement of an attempt claim.

20 More importantly, though, given the nature of the claim  
21 that's pled in the complaint -- which, by the way, is a  
22 *Broadcom* claim, *Broadcom v. Qualcomm*. That's what this claim  
23 is modeled after. The complaint says explicitly Huawei made  
24 false, you know, FRAND commitments and that's how it got its  
25 patents incorporated into the standards, thereby obtaining

1 monopoly power. That was the claim pled.

2 It's not the claim that's been developed in discovery.

3 It's not a claim as to which they have evidence to proceed, but  
4 that claim is a claim that sounds in fraud. And Judge Koh,  
5 apparently their favorite authority at the moment, has said  
6 that explicitly.

7 **THE COURT:** It's one of mine too. I'm a fan of  
8 Judge Koh's.

9 **MR. GIARDINA:** I agree with her wholeheartedly on this  
10 point. She says that the claim, the *Broadcom* claim, sounds in  
11 fraud and, of course, fraud requires intent. And given the  
12 nature of the fraud that's alleged here, that Huawei made false  
13 FRAND commitments, those commitments have to have been false at  
14 the time they were made, and proof that Huawei thereafter  
15 breached them is insufficient as a matter of law to reach a  
16 jury on that issue.

17 And adding together all of the conduct that Mr. Verhoeven  
18 has mentioned doesn't amount to anything other than an  
19 allegation that somehow we've breached our FRAND commitment in  
20 our negotiations with Samsung, and that alone would be an  
21 insufficient basis on which to get to a jury to establish that  
22 Huawei's series of FRAND declarations were false.

23 We too in the slides I've given you have a timeline, which  
24 begins with an event that they introduced in their opposition  
25 to our motion, which is that Huawei in 2008 declared publicly

1 that it would seek royalties of up to 1.5 percent for a license  
2 to its LTE portfolio.

3 The conduct that he is finding so objectionable thereafter  
4 is entirely consistent with what Huawei said long before its  
5 patents were incorporated into the standard. They can't  
6 establish that had the world known that Huawei was going to  
7 seek 1.5 percent, it would not have obtained the monopoly power  
8 that it allegedly possesses today because Huawei told the world  
9 it was going to do that. It apparently has done it and, as a  
10 consequence, they just don't have the ability to demonstrate  
11 the causation element. That's the *Townshend* case that's cited  
12 in our reply brief.

13 Let me touch briefly on the refusal-to-deal issue,  
14 Your Honor. The doctrine is completely inapposite to this  
15 case. Refusal-to-deal doctrine, the rare instances in which  
16 Section 2 imposes such an obligation on a monopolist, deal with  
17 circumstances in which the monopolist has an input that its  
18 competitors require in order to compete with it; and by  
19 withholding that input, it can forestall competition from those  
20 nascent competitors.

21 The *Aspen Skiing* case is the perfect example and it's the  
22 outer boundary of Section 2 according to, you know, the  
23 Supreme Court in the *Trinko* case. In *Aspen Skiing* the, you  
24 know, monopolist wouldn't sell lift tickets to its competitor.  
25 A competitor without those lift tickets couldn't compete. They

1 were able to prevent competition in the relevant market by  
2 refusing to deal.

3 Now, they cite or suggest by having some quotations from  
4 *Aspen Skiing* that it dealt with something other than an  
5 absolute refusal. It did not. The alleged monopolist in that  
6 case refused to sell the lift tickets even at a retail price to  
7 its competitor. It was an outright refusal. It says nothing  
8 about if you charge too much, it can be a *de facto* refusal to  
9 deal.

10 The *Aerotek* case, which we cite in our long footnote, says  
11 quite to the contrary; that in order for one to have a refusal  
12 to deal, the doctrine doesn't apply in this case because we're  
13 not preventing someone from getting an input they need to  
14 compete with us in the relevant market. We're a monopolist in  
15 the market. They can't license our patents. The doctrine  
16 itself has just absolutely no application here, but it clearly  
17 requires something more than trying to charge too much, and  
18 that's the *Aerotek* case that we cite in that footnote.

19 One last aside, which is just an irony to me, on a refusal  
20 to deal, in order for a court to decide that it's appropriate  
21 to impose that on a monopolist, the Court needs to conclude  
22 that it has the ability to determine the appropriate terms that  
23 should be -- that the input should be sold at.

24 Now, Samsung has been in this courtroom for two years  
25 telling you you don't have the ability to do that. It can't be

1 done judicially. Just it's got to be left to private  
2 negotiation. It's the height of irony that they would suggest  
3 that that's a judicially administrable remedy; and in the  
4 absence of that being a judicially administrable remedy, you  
5 can't have a refusal to deal.

6 The Koh case, you know, the FTC *Qualcomm* case completely  
7 different, an absolute refusal on the part of Qualcomm to  
8 license its competitors in not the relevant technology market,  
9 the chipset market, such that they could not sell chips in  
10 competition with Qualcomm. The case, if one reads it, it's  
11 clearly factually inapposite and the doctrine just has no  
12 application to this case.

13 Finally, you know, with respect to, for example, the  
14 deposition testimony that Mr. Verhoeven pointed you to, it  
15 simply doesn't say what, you know, he wants to draw the  
16 inference that it says. That testimony does not suggest that  
17 Huawei intends to use injunctions to get more than a FRAND  
18 royalty.

19 Read the words on the page. It says Huawei wants to get  
20 Samsung to the bargaining table so that they can get a FRAND  
21 royalty. There is no reasonable inference from that that would  
22 create a triable issue.

23 And, of course, the injunctions were sought four years  
24 after the last of the relevant declarations. That's not  
25 evidence that they were false when they were made.

1       That's, I think, all I have unless you have any questions.

2       **THE COURT:** I don't. Thank you.

3       **MR. GIARDINA:** Thanks.

4       **MR. VERHOEVEN:** At the risk of raising the ire of my  
5       colleagues, I have about 30 seconds, Your Honor, to just a  
6       couple of things.

7       **THE COURT:** Okay.

8       **MR. VERHOEVEN:** The argument -- they're back to the  
9       argument that you have to show evidence temporally before there  
10       was -- before the standards were enacted, and they cite to  
11       fraud in the inducement cases, and we point that out in our  
12       opposition brief, not antitrust cases. And they cite to no  
13       antitrust cases for that proposition, and they cite to none of  
14       these FRAND-related cases, just fraud in the inducement cases.

15       Now, if you go to Slide 28, Your Honor, we cite -- we  
16       didn't have a chance to really address what they said in their  
17       reply, so we cite *Williston on Contracts*. Okay? (reading)

18       ".... a defendant's subsequent acts may be examined in  
19       determining whether the requisite fraudulent intent was  
20       present when the promising question was made."

21       It's hornbook law, and we have tons and tons of evidence  
22       that raises a substantial issue of fact as to that.

23       They say, well, the only evidence we have is that our  
24       allegation is a breach of FRAND. Well, first of all, that's  
25       not true. And then they say, in simple, the breach is not

1 enough. You have to show evidence of intent. And they make it  
2 sound like this big deal.

3       But if you look at, for example, the *Ensley versus Cody*  
4 case, which we have here on Slide 28, Fifth Circuit 1999 case,  
5 171 F.3d 315, that case clarifies that the only thing that's  
6 required beyond the breach to make a claim survive in a fraud  
7 in the inducement case, Your Honor, not in an antitrust case,  
8 is, quote, "slight circumstantial evidence." Well, we've got  
9 oodles of evidence here and that's all an issue of fact,  
10 Your Honor.

11       I'd love to address the other points, but I don't have  
12 time. So thank you very much, Your Honor.

13       **THE COURT:** Well, good enough.

14       You guys, you still have about 30 minutes.

15       All right. What's next?

16       **MR. LEWIS:** So, Your Honor, I'm sure you'll be happy  
17 to get back to the patent issues.

18       **THE COURT:** I was actually -- I would have been happy  
19 with an hour of antitrust actually, but go ahead.

20       **MR. LEWIS:** I figured as much, but I have to do the  
21 patent stuff anyway.

22       So you asked in your tentative for the '239 patent, how  
23 was the group number k allocated by the system. You also on  
24 page 3 indicated that so far you believe Huawei presents no  
25 evidence that u+1 is allocated by the system. And so I wanted

1 to address those issues.

2 So this came up in Samsung's reply brief. They came in in  
3 response to our opposition and said, "Well, hey, there's these  
4 other words in the claim, 'allocated.'" So, of course, we  
5 didn't have a chance to do anything about that.

6 If we could go to Slide 43, Troy, please.

7 So, Your Honor, I'm going to start on Slide 43 of our  
8 technical presentation, which Mr. Bettinger handed up a few  
9 moments ago.

10 **THE COURT:** Okay.

11 **MR. LEWIS:** So this just quotes Samsung's brief where  
12 they brought up this issue; and then on 44, I'll take you  
13 through the answer to your question.

14 The answer is that we presented evidence through the  
15 opinion of our expert, Dr. Veeravalli, and his expert report is  
16 attached to Samsung's motion for summary judgment as Exhibit B,  
17 as in boy. I have some call-outs from that in this  
18 presentation, but the full report is in the record.

19 So basically there are -- well, as Your Honor knows from  
20 the other parts of the motions that you've already decided, the  
21 group number  $k$  is equal to  $u+1$  in the standard.  $u+1$  is  
22 calculated using parameters that come from the system from the  
23 network. First, obviously,  $u$  is calculated and then the very  
24 advanced calculation of adding 1 to it is performed.

25 And so how does that happen? Dr. Veeravalli explains,

1 first of all, that the system allocates the value for  $u$  and  
2 then the 1 is added to obtain the group number  $k$ , and he  
3 describes how that's done in paragraph 252 of his report.  
4 There he shows that  $u$  is equal to these two parameters in LTE.  
5 This is all from LTE so none of this is confidential.

6 On the next slide, we explain how these parameters are  
7 found. The first one,  $f_{\text{sub}} g_h$ , is found using in part  $N$  cell  
8 ID, which comes from the network, and obviously this is  
9 something that the expert will opine on at trial and I  
10 obviously will not get into detail on today for all of our  
11 sake.

12 The next slide talks about the other parameter in this  
13 equation for  $u$  and that's  $f_{\text{sub}} s_s$ , which comes in two forms.  
14 One is for PUCCH and the other for PUSCH. The tricky part is  
15 that the one for PUSCH actually uses the other one, and that's  
16 shown here; but, in any event, the important part is that it  
17 uses a parameter called  $\delta_{\text{sub}} s_s$ , which, as it says right  
18 here, is configured by higher layers, and the higher layers are  
19 referred to the system, the network sending that information to  
20 the UE.

21 Dr. Veeravalli then went on to conclude that the standard  
22 indicates that the cell ID and the  $\delta_{\text{sub}} s_s$  come from the  
23 network.

24 So it's extremely clear that the group number  $k$ ,  $u+1$ , is  
25 allocated by the system, the network. The parameters in order

1 to calculate that are sent down, first  $u$  is calculated, then  $1$   
2 is added to it, and then that's the group number  $k$  that  
3 Dr. Veeravalli very clearly alleges corresponds to the group  
4 number  $k$  in the claim.

5 Continuing -- if Your Honor has any questions about that,  
6 a couple more issues on this I'd like to cover.

7 **THE COURT:** I think you ought to cover those issues  
8 because my questions would last a lifetime.

9 **MR. LEWIS:** Well, by then we'd be lucky and 5G would  
10 come out and none of this would matter.

11 **THE COURT:** The jury will decide it before I've  
12 finished all my questions I'm sure. Go ahead.

13 **MR. LEWIS:** In addition, there was in your tentative  
14 the statement that Huawei is not arguing that  $k$  equals  $u$  and  
15  $u+1$ ,  $k$  always equals  $u+1$ , and that certainly is something  
16 we agree with.

17 And then it says (reading) :

18 "Real issue whether UE obtains group number  $k$  because  
19 it only obtains  $u+1$ , not  $u$ ."

20 So the UE obtains I guess both of them,  $u$  and  $u+1$ . The  
21 only one that's really relevant to the infringement case is  
22  $u+1$ .  $U$  is sort of a path along the way. So  $u+1$  is  
23 obtained by taking the parameters, calculating  $u$ , adding 1, and  
24 then you've obtained  $u+1$ , and that corresponds to the group  
25 number  $k$ .

1       I was a little confused about what was written there so I  
2 wanted to clarify that.

3           **THE COURT:** Okay.

4           **MR. LEWIS:** And the other issue is also in your  
5 tentative on page 3, and this has to do with the DOE issue and  
6 whether there's a substantial difference between u and u+1  
7 and used a question mark on that, which maybe made me think I  
8 should talk about it.

9           **THE COURT:** Yes.

10           **MR. LEWIS:** If we could go to 175, please, Troy.  
11 Thank you.

12           In the slide deck, 175 is actually the second-to-the-last  
13 page in the deck.

14           So the DOE was disclosed in the expert report in response  
15 to a statement in Samsung's interrogatory responses that came  
16 in at 11:00 p.m. on the last day of discovery where they put in  
17 this very cryptic statement about of course u+1 is not the  
18 group number that I've reproduced here on the slide.

19           We really didn't know what to do with that, frankly, so we  
20 had our expert opine to direct infringement with u+1; and not  
21 knowing what underlied Samsung's statement, we also had him  
22 provide a doctrine-of-equivalents analysis in his report, which  
23 is also on the slide here in summary.

24           Samsung and Dr. Madisetti responded to that and then  
25 Dr. Veeravalli was able to respond in his reply report. So the

1 issue has been fully joined. I mean, I don't know that I would  
2 consider -- I don't consider the DOE allegation late at all  
3 because it responded to something that was provided at  
4 11:00 p.m. on the last day of discovery and was so cryptic we  
5 didn't really know what to make of it so we thought that  
6 Dr. Veeravalli should try to cover that.

7 So hopefully that explains this issue of whether or not  
8 it's disclosed.

9 **THE COURT:** I guess the issue that I'm trying -- that  
10 I was wrestling with, really, is: Is there a substantial  
11 difference between those two numbers?

12 **MR. LEWIS:** Well, there isn't a --

13 **THE COURT:** And how am I supposed to figure that out?

14 **MR. LEWIS:** Well, it's a fact issue so fortunately you  
15 don't have to. The jury does. But -- fortunately for you,  
16 that is. Either way, in my opinion.

17 But I think the issue is that is it a substantial  
18 difference just to add 1 to something. Samsung is focused on  
19 whether you get a different result if you put u or u+1 into  
20 the equation --

21 **THE COURT:** Right. But --

22 **MR. LEWIS:** -- but I think that --

23 **THE COURT:** -- does that matter?

24 **MR. LEWIS:** I think that misses the point; right? The  
25 point is that you can add 1 to something and that's an

1       insubstantial difference and then you're putting  $u+1$  into the  
2       equation. It's not that the equation would give you a  
3       different result. It's that essentially you could start  
4       numbering  $u$  from 1 and you could get to 30 or you could start  
5       numbering  $u$  from 0 and get to 29. In both cases you have 30  
6       group numbers, 0 through 29 or 1 through 30, and it isn't  
7       really a substantial difference about, you know, where you  
8       start counting.

9           And while the equation will give you different results if  
10      you put in a 1 or a 0, what you're really saying is: Oh, this  
11      is the first group. Okay. So let's put in the value  $u+1$ ,  
12      which identifies the first group; and whether you take the  
13      1 through 30 and you use 1 or whether you start with 0 and just  
14      add 1 to it, it doesn't matter. You're still counting 30  
15      groups.

16           And I think that's the point of the doctrine-of-equivalent  
17      analysis in two minutes or less.

18           Your Honor, I do not have any more on this point. I'd  
19      love to answer any questions you might have that don't require  
20      a Ph.D. I'll leave those for Dr. Veeravalli.

21           **THE COURT:** Okay. Thank you.

22           **MR. LEWIS:** Thanks, Your Honor.

23           **MR. MACK:** Your Honor, Brian Mack on behalf of  
24      Samsung.

25           We have some slides as well.

1 (Pause in proceedings.)

2 **MR. MACK:** So there was a little bit, I think, of hand  
3 waving there so I wanted to start from the beginning.

4 If we could put up Slide 4 from the MSJ deck, or you could  
5 turn to it.

6 The claim language is very clear. The first step of  
7 Claim 6 (reading) :

8 ".... obtaining, by a cell or base station or a user  
9 equipment, a group number k of a sequence group allocated  
10 by the system."

11 So if you go to the next slide, Slide Number 5, the Court  
12 construed this as follows (reading) :

13 ".... a group number k allocated by the system where  
14 the group number k identifies a sequence group and where  
15 the value K is the same throughout the claim."

16 So there's two requirements: The group number k has to  
17 be, one, allocated by the system; and then the group number k  
18 has to be the same throughout the claim.

19 And you'll note -- in the claim language, you'll note that  
20 group number k that appears in the "obtaining" step but then k  
21 also appears in the "wherein" step several times.

22 So the Court's question "How is group number k allocated  
23 by the system," I saw a lot of evidence in slides from Huawei  
24 of how the value u is allocated by the system but nothing on  
25 how the value u+1, which is what Huawei alleges is a group

1 number k, is allocated by the system.

2 And so if we could -- could we put up Slide Number 7?

3 **THE COURT:** I think you need to do the paper.

4 **MR. MACK:** If you turn to Slide Number 7, it's easier  
5 to see visually, but this is an excerpt from Dr. Veeravalli's  
6 report. He first -- in paragraph 251, he explains the claim  
7 language and he explains the Court's construction; and then in  
8 paragraph 252, he says that (reading) :

9 "The Infringing Samsung Products perform steps  
10 required by the LTE standard to obtain a value for 'u,'  
11 which is allocated by the system."

12 It says "u." It doesn't say "u+1."

13 And then he cites to Section 5.5.1.3, the group hopping  
14 section of the LTE standard. That's all the evidence he  
15 provides for the value that's allocated by the system.

16 And the parties I think agree on what "allocated" means.

17 There were some dictionary definitions in the briefing.

18 "Allocated" means to reserve or assign -- reserve for use or to  
19 assign to a particular UE. It can allocate bandwidth. It can  
20 allocate frequency. You're allocating, you're setting aside  
21 something for a particular user equipment.

22 So if you now go to Slide 10, we have the actual evidence  
23 that Dr. Veeravalli presented. You can see nowhere does he or  
24 Huawei allege that the value u+1 is allocated or obtained.

25 They only cite to this one section from the 3GPP technical

1 specification that says the sequence group number  $u$  is defined  
2 by this equation.

3 And if we could flip back up to Huawei's Slide 45 that we  
4 just saw, you see here it says there's an equation in the LTE  
5 standard. We don't dispute this. But it says  $u$  equals this.  
6 It doesn't say  $u+1$ .

7 So the value  $u$  is defined -- is defined in the LTE  
8 standard, that if the sequence -- there's a sequence group  
9 number  $u$ , but there is no  $u+1$  that's allocated by the system  
10 or allocated as described in the standard or obtained by the  
11 user equipment.

12 So the reason why I think Huawei has to interchange this  $u$   
13 and  $u+1$  is pretty simple. Because all of the evidence that  
14 you've seen, Slide 45, if you go to Slide 46, Huawei's  
15 Slide 46, again, it says  $u$  equals this equation mod 30. So  $u$   
16 is defined but there's no  $u+1$  defined in the LTE standard.

17 So there's a lot of hand waving that's been going on here,  
18 and there is the value  $u$  that's being used in the obtaining and  
19 the allocating step, and then the value  $u+1$  is being used in  
20 all the subsequent steps in the claim.

21 And that's where I think Huawei's analysis isn't  
22 consistent with the Court's constructions of the value for the  
23 group number  $k$  has to remain the same throughout the claim. If  
24 they want to say it's  $u$ , that's fine; but if they want to say  
25 it's  $u+1$ , that's also fine but they have to keep it the same

1 throughout the claim, but that's not what we see being done  
2 here.

3 Moving on to the doctrine-of-equivalents argument, if we  
4 could -- we also have a motion to strike slides...

5 (Pause in proceedings.)

6 **MR. MACK:** So we have some other slides here, but we  
7 have cited in our brief at Docket 333-2, pages 3 to 4.

8 Obviously if you start with some value and you want to get to  
9 another value, you can add or subtract some arbitrary value to  
10 get there. So we think there definitely is a substantial  
11 difference between using  $u$  and using  $u+1$  in the standard.

12 Dr. Madisetti, which is cited in our report, in our  
13 briefing, Docket 333-2 at pages 3 and 4, Dr. Madisetti explains  
14 that the value  $u$  is a very important value in this claim; that  
15 the sequence number  $K$  or the value  $u+1$  or  $u$ , it's used to  
16 create the basic sequence index in the claim.

17 So that basic sequence index, that's used to generate  
18 reference signals, and a reference signal is just a string of  
19 ones and zeros that are sent from the user equipment to the  
20 base station, and then the base station uses that to interpret  
21 or decode all the subsequent information that's sent from the  
22 UE.

23 So if you just increase the basic sequence index by one,  
24 an arbitrary number, the base station is not going to be able  
25 to understand or interpret any communications from the UE. And

1 Dr. Madisetti, Samsung's expert, cites that, and we cite to  
2 that on pages 3 to 4 at our opening brief.

3 So there certainly is a substantial difference between  
4 using the value  $u$  and using the value  $u+1$ . This is a highly  
5 technical area. The value 1 may seem like a small value but  
6 it's an arbitrary value, and there would be no communication  
7 between the UE and the base station if that basic sequence  
8 index is just arbitrarily incremented by the value 1.

9 And regarding the timing, I think Mr. Lewis mentioned the  
10 timing, we have -- the MSJ slides, Slide 77 -- so we have the  
11 motion-to-strike slide deck and there's another slide deck, and  
12 this is --

13 **THE COURT:** 77?

14 **MR. MACK:** I have, yeah, Slide 77.

15 You'll see on October 25th, 2016, that's when Huawei's  
16 initial infringement contentions were served, their initial  
17 infringement contentions identified group number  $k$  equaling  
18  $u+1$ . So they knew from the very beginning that they were  
19 going to be relying on  $k$  equaling the  $u+1$ , and they also knew  
20 from the very beginning that the claim had this plain language  
21 that the group number  $k$  is allocated by the system.

22 So they knew that this allocation by the system of  $u+1$ ,  
23 they were going to need to show this from the very beginning,  
24 but they never disclosed the doctrine-of-equivalents argument  
25 until the opening expert reports.

1       So they really just backdoored that in with the opening  
2 expert reports. We were not aware of it. We were not  
3 expecting it, and we think that's not in compliance with the  
4 local rules.

5       So I understand that Mr. Lewis thinks that there's a  
6 factual issue between u and u+1 and, you know, how the jury  
7 determine whether or not the doctrine of equivalents applies,  
8 but we think that that's not an issue that should ever reach  
9 the jury because it wasn't timely disclosed in conjunction --  
10 in compliance with the local rules.

11       That's all I have.

12       **THE COURT:** So would you agree that if I decided that  
13 I didn't care about the local rules argument, that it's a  
14 question of fact, then, that ought to go to the jury; or do you  
15 think as a matter of law I can make that determination?

16       **MR. MACK:** I mean, I know there are competing -- their  
17 expert does express an opinion in his expert report that the  
18 differences are insubstantial and our expert does say that  
19 they're substantial, but we don't think you should ever reach  
20 that issue because it wasn't timely disclosed.

21       And the reason why they're relying on this  
22 doctrine-of-equivalents argument is so that they can do this  
23 hand waving for the obtaining step and the allocation step.  
24 They're relying on u+1 for every limitation except the first  
25 limitation where they're relying on the value u and not u+1.

1       So we think they're going to try to backdoor in a  
2 doctrine-of-equivalents argument on this allocation and  
3 obtaining step that you've identified in your tentative order,  
4 and we completely concur with your tentative.

5       **THE COURT:** Okay. Thank you.

6       **MR. LEWIS:** Your Honor, I'd like to have just a very  
7 few three points on this.

8       **THE COURT:** Sure.

9       **MR. LEWIS:** First of all, I think their argument now  
10 is that  $u$  is allocated so I think their argument now is that  
11 all of a sudden it becomes  $u+1$  is then not allocated. So the  
12 system can allocate  $u$  but if the system also then adds 1 to it,  
13 all of a sudden this allocation disappears.

14       I think that can't be right and it isn't right. It's part  
15 of the calculation process that Your Honor has already decided  
16 is okay for the obtaining step and certainly for the allocating  
17 step.

18       Second of all, they point to Dr. Veeravalli, and we talked  
19 about this in our brief. In section -- I'm sorry --  
20 paragraph 252 of his report, and this is on page 7 of their  
21 slides here on summary judgment, he has a paragraph or a number  
22 of paragraphs where he talks about 2 because -- sorry -- he  
23 talks about  $u$  because in order to get to  $u+1$ , you first have  
24 to explain how you get  $u$ . So he does that. He explains how he  
25 gets to  $u$ , and then he says with no exception that the group

1 number k is u+1. But in order to get there, you have to  
2 first figure out what u is, and then you can make the very  
3 advanced calculation of adding 1.

4 And then my third point was -- is there's clearly a  
5 dispute about DOE, but I think Your Honor's last question just  
6 took care of that.

7 **THE COURT:** Okay.

8 **MR. LEWIS:** Nothing further.

9 **THE COURT:** Thank you.

10 **MR. MACK:** The only thing I just wanted to remind  
11 Your Honor, again, Slide 11 is the entire section of the LTE  
12 standard, 5.5.1.3 group hopping. You'll only see the sequence  
13 group number u. You won't -- you'll see that defined. You  
14 won't see u+1 defined anywhere in the LTE standard. So the  
15 fact that Mr. Lewis is saying that u+1 is somehow allocated,  
16 it's just not. Only the value u is defined in the standard;  
17 u+1 is not.

18 **THE COURT:** Thank you.

19 **MR. WHITEHURST:** Good afternoon, Your Honor. Alan  
20 Whitehurst for Samsung.

21 And if possible, can we get Samsung's slides up on the  
22 screen?

23 **THE COURT:** Yes. Hang on just a second.

24 (Pause in proceedings.)

25 **MR. WHITEHURST:** And in the interest of time, I'll be

1 starting with Slide 23.

2 **THE COURT:** Okay.

3 **MR. WHITEHURST:** I'm going to be addressing Huawei's  
4 summary judgment motion for noninfringement of the '130 patent.  
5 This is tentative C in your tentative ruling on the first page.

6 This motion turns on the claim language "mapping the data  
7 information to remaining symbols in the slot that are not used  
8 to map the reference signal."

9 As you can see here on the screen, I want to make four  
10 quick points.

11 First, Huawei's motion is limiting the plain and ordinary  
12 meaning of the claim term. You've said before in other cases  
13 that for summary judgment motions, claim terms should be given  
14 the full range of their plain and ordinary meaning.

15 And in Claim 13, as I'm going to show, the word  
16 "remaining" is saying where the data information should be  
17 placed in the slot, not when the data information should be  
18 placed in the slot.

19 Huawei is taking Claim 13 and turning it into something  
20 that it was never meant to be. What Huawei is doing is reading  
21 in the limitation after into Claim 13, but this is not the case  
22 where there's something in the intrinsic record that mandates  
23 this limitation to be read into the claim.

24 There's nothing in the specification, nothing in the  
25 prosecution history that says the data must be put into the

1 slot after the reference signal, and I'm going to go through  
2 the '130 patent quickly and show you that.

3 And, third, Dr. Bambos in his expert report used the plain  
4 and ordinary meaning of "remaining." The application of the  
5 plain and ordinary meaning to the accused products is a factual  
6 question for the jury.

7 And, fourth, as you've indicated in your tentative, I'm  
8 going to go through and show why the order of the steps is  
9 insubstantial and it doesn't affect the final result.

10 If we could jump forward to Slide 27, please.

11 To put everything in proper context, it's helpful to look  
12 at the invention itself. We discussed this patent at the  
13 *Markman* hearing about a year ago. The '130 patent protects  
14 acknowledgment information when it's transmitted from the phone  
15 to the base station, and that's important. What happens inside  
16 the phone is not important. It's what happens once it leaves  
17 the phone to go to the base station.

18 And the way the '130 patent protects the acknowledgment  
19 information is by using a particular slot structure. Different  
20 information is mapped or put in different symbols and it  
21 doesn't matter what order the information is put in the slot as  
22 long as it's put in the correct location before it leaves the  
23 phone to go to the base station because the way it's organized  
24 and put in the slot as it travels over the air is what protects  
25 the information.

1       If we could turn to Slide 29.

2           In the '130 patent, the reference signal always goes in  
3 the middle symbol, which is highlighted in yellow. You can see  
4 here the middle symbol is highlighted.

5           Data and acknowledgment information can't go in the middle  
6 symbol. The way the LTE standard works is, this middle symbol  
7 is always reserved for the reference symbol. It's not possible  
8 to put data and acknowledgment information in there. It's put  
9 in the remaining, the other symbols. And because this middle  
10 symbol is reserved for the reference signal, this order doesn't  
11 matter.

12          Now, I want to turn now to Slide 30 and Claim 13. When we  
13 look at the word "remaining" in the claim itself, it's  
14 specifying where the data information goes, not when. And I  
15 think there's a helpful analogy that shows how the word  
16 "remaining" is working in Claim 13.

17          If we can turn to Slide 31.

18          Claim 13 is like a parking lot where some spots are  
19 reserved. As you can see here, there's seven parking spots,  
20 just like the seven symbols in the slot, and the middle parking  
21 spot is reserved. The driver can't park there. And if you can  
22 see there on the slide, you have a parking lot attendant that's  
23 talking to the driver of the car, and the attendant tells the  
24 driver, "You can't park in the reserved spot. Please park in  
25 any of the remaining spots." And the driver responds, "Okay.

1 I'll park in one of the other spots."

2 Just like in this example I've given, it's just like in  
3 Claim 13, the word "remaining" and the word "other" are  
4 synonymous. They can be used interchangeably. Just when the  
5 parking lot attendant says "You can park in any of the  
6 remaining spots," the driver says, "You can park in any of the  
7 other spots"; and that's exactly how it is in Claim 13.

8 Now, I'm going to speed up and try to go through this  
9 quickly in Claim 32. What Huawei has done is relied on a  
10 dictionary definition. They've relied on definition three. If  
11 you look there at the bottom of the slide, Claim 32, the same  
12 dictionary definition that Huawei relies on, you'll see that  
13 the fifth definition says "to be reserved or in store." And  
14 that's what "remaining" is talking about in Claim 13. It's  
15 reserved or in store for certain types of information.

16 This middle symbol is reserved for the reference signal.  
17 The remaining symbols are reserved for the data. Everything  
18 has been preset and this information is being put in so that it  
19 can be transmitted to the base station to protect it.

20 Slide 33.

21 When you look at Claim 13 in more detail, we can see how  
22 there are three types of information, and there's a location  
23 for each information because that's what's important in  
24 Claim 13. That's the information. Where does this information  
25 go?

1       And you see that when you look at Slide 34 and you talk  
2 about the term "remaining," in this context the word  
3 "remaining" means "other" or "reserved" or "in store for." And  
4 if you take the words "other" or "reserved" or "in store for"  
5 and put it in for the word "remaining," that's what makes  
6 sense. That's what works. That's what properly reflects the  
7 '130 invention. That's the invention that Samsung came up  
8 with.

9       Samsung's invention wasn't putting the information in in a  
10 particular order. That's irrelevant. What was important to  
11 their invention was putting it in the correct location, and  
12 that's what the word "remaining" is doing in Claim 13; it's  
13 telling the reader where the information goes, not when.

14       When you look at Slide 35, you can see in Huawei's motion  
15 that they've taken the claim and rewritten it as "remain after  
16 mapping."

17       When you look at 36, you can see that what Huawei is  
18 really doing here is changing the language of the claim from  
19 "remaining symbols in the slot that are not used to map the  
20 reference symbol" to say "symbols that remain after mapping."

21       But you don't read limitations into the claim unless  
22 there's something in the patent that says you must narrow the  
23 claim scope.

24       When you look at Figure 2 and Figure 3 of the patent,  
25 which are in Slides 37 and 38, you'll see, if you look at

1       Slide 37, there's a processing flow where the data is added for  
2       the acknowledgment information.

3           But what's important in Figure 2 is, there's not a box for  
4       the reference signal. The reference signal is handled by a  
5       completely different processing flow. This means that the  
6       reference signal can be added before, at the same time, or  
7       after the data in the acknowledgment information.

8           If the inventors had said, "You know what, where and when  
9       you put the data in is important," they would have in Figure 2  
10      shown boxes where the reference signal goes first, then the  
11      data, and then the acknowledgment information. But when they  
12      were explaining their invention to the public, they didn't do  
13      that. They left the reference signal out because that wasn't  
14      important. It didn't matter what order the reference signal  
15      goes into the slot.

16           So the rest of my slides, which I'm not going to have time  
17      to go through, show why there are triable issues of material  
18      fact. It goes through Dr. Bambos' report. It shows how  
19      Dr. Bambos explains that in the LTE system, the middle symbol  
20      is always reserved for the reference signal; how in the LTE  
21      standard, the data is put in the remaining or the other  
22      symbols; and he also goes through in his report and explains  
23      why the order doesn't matter, it's an insubstantial difference  
24      that doesn't affect the result.

25           As we explain in our briefs, the *Cadence* case is directly

1 on point, a Federal Circuit case, looked at a similar situation  
2 where even when the court looked at a method claim and said  
3 they had to be done in a particular order, they said it still  
4 infringes under the doctrine of equivalents.

5 Unless you have any other questions, I'm going --

6 **THE COURT:** Can I ask any? No. Thank you.

7 **MR. WHITEHURST:** Thank you, Your Honor.

8 **MR. LEWIS:** Your Honor, I'm going to respond to this  
9 and then I'm going to talk about one of the issues that we  
10 would have on our side relating to the doctrine of equivalents  
11 on this patent, which in the tentative you went the other way  
12 on.

13 **THE COURT:** Okay.

14 **MR. LEWIS:** So, Troy, if I could have...

15 (Pause in proceedings.)

16 **MR. LEWIS:** So this is a claim on the screen. And  
17 this is Slide 6 of our presentation. It's a method claim. It  
18 requires active steps.

19 Everything that was said by Samsung's counsel is static,  
20 and perhaps an apparatus claim it might be pertinent to but  
21 it's not pertinent to a method claim. The method claim  
22 requires actually performing the mapping or reference signal,  
23 mapping the data information, mapping the acknowledgment  
24 information. And when you do that, it does matter what order  
25 this is done because the claim clearly says you map a reference

1 signal, the middle symbol, map the data information to  
2 remaining symbols in the slot that are not used to map the  
3 reference signal.

4 If you did those in reverse order, you would hit mapping  
5 the data information to remaining symbols in the slot that are  
6 not used to map the reference signal. What remaining symbols?  
7 I haven't mapped the reference signals yet because that's out  
8 of order, and that's not consistent with the claim language.

9 The claim does not talk about reserved parking spots. It  
10 does not talk about other or any of these other things. It's  
11 very specific. It requires actions that need to be performed,  
12 by its own language, in the order indicated.

13 I put this slide together to show what happens after the  
14 mapping step. You put the reference signal in and then you  
15 have the remaining symbols in the slot. That's everything else  
16 and that's what the other steps of the claim exist to fill.

17 Again, method claims have orderings of steps because they  
18 require performing certain steps.

19 And then let me also talk about a few other things that  
20 counsel mentioned and referred when I do this to his  
21 presentation. He cites Figure 10 on Slide 27 of his slides.  
22 Figure 10 is the slot with the symbols filled up. That's the  
23 end result of performing the steps in Claim 13, the method  
24 claim. It doesn't tell you one way or the other whether or not  
25 you do this or that in one order or another. You have to look

1 at the claim for that, and the claim is very clear.

2                   **THE COURT:** But if you're reserving the middle symbol  
3 for the reference, why does it matter in what order the rest of  
4 the slots get filled in?

5                   **MR. LEWIS:** Well, because the claim doesn't say that,  
6 Your Honor. It says that you map the reference signal, and  
7 then it says --

8                   **THE COURT:** The middle.

9                   **MR. LEWIS:** The middle symbol. And then it says --

10                  **THE COURT:** Right. If you've reserved the middle  
11 symbol, why does it matter what order you do it in?

12                  **MR. LEWIS:** Well, it actually does matter. If you're  
13 thinking about it from a doctrine of equivalents point of view  
14 or from a claim construction point of view?

15                  **THE COURT:** Just you tell me.

16                  **MR. LEWIS:** Well, from a claim construction point of  
17 view it matters because the claim language says it matters, and  
18 the claim talks about the remaining symbols in the slot. It  
19 doesn't talk about reserved symbols, and it's a method claim.

20                  So you have to be -- if you perform, as I said before,  
21 either mapping the data information or mapping the  
22 acknowledgment information steps and then you come across this  
23 language that says "to the remaining symbols in the slot" -- it  
24 doesn't say "reserve symbols," it says "remaining symbols" --  
25 and you don't have remaining symbols in the slot because it

1 actually also says "that are not used to map the reference  
2 signal" but you won't have mapped it because these are active  
3 steps.

4 They're looking at it statically like the end result in  
5 Figure 10.

6 **THE COURT:** I understand what you're saying.

7 **MR. LEWIS:** Okay.

8 In addition, I actually also think it's kind of telling  
9 that counsel pointed on pages 37 and 38 to Figures 2 and 3 in  
10 the '130 patent as, you know, supposedly not having this  
11 ordering. What's interesting is neither of those figures have  
12 the reference signal at all. It's completely absent. So those  
13 clearly can't be telling us anything about the order, which  
14 again wouldn't matter because the claim language here is clear.

15 Now I'd like to spend a couple minutes on the DOE issue.  
16 In your tentative, Your Honor, you indicated that there may  
17 be -- maybe that the difference is insubstantial. I don't even  
18 think we get there.

19 And if I could bring up 793.

20 So in their briefs, the other side, Samsung, cites one  
21 thing, paragraph 793 of their expert's report, which  
22 unfortunately appears on two different pages so I've combined  
23 it here.

24 That paragraph basically just cites the buzzwords from the  
25 standard. It says, oh, you know, it's insubstantially

1 different and it says it's substantially the same function,  
2 substantially the same way to obtain substantially the same  
3 result. There's no analysis of why any of that is true, even  
4 allegedly, even accepting everything true for Samsung here.  
5 That's the sum total of what they cite in their papers on the  
6 doctrine -- on our motion for summary judgment with respect to  
7 the doctrine of equivalents.

8 I put forward, Your Honor, this is not sufficient to go to  
9 a jury. This is nothing more than boilerplate recitation of  
10 the words that -- the standard of what DOE is supposed to show,  
11 and so summary judgment should be issued, both because the  
12 claim requires performing these steps in order -- there's no  
13 evidence that's done -- and also that they don't even get to  
14 DOE because this is not something that the jury can consider.  
15 Those are just the buzzwords out of this legal standard.

16 And with that, Your Honor, unless you have any questions,  
17 I'm going to sit down.

18 **THE COURT:** Thank you, Mr. Lewis.

19 **MR. LEWIS:** Thank you.

20 **MR. WHITEHURST:** I'm told that I have to keep this  
21 under a minute.

22 If we could put Slide 6 up on the screen, please.

23 Your Honor knows that the case law is very clear that in  
24 method claims, you don't put an order in the claim unless  
25 there's a reason, something mandating that limitation.

1 When you look at -- can we get Slide 6, please?

2 **THE CLERK:** 6 of your own or 6 of plaintiffs'?

3 **MR. WHITEHURST:** 6 of Huawei's.

4 (Pause in proceedings.)

5 **MR. WHITEHURST:** What you're seeing here is a dispute  
6 over the plain and ordinary meaning of the term, and Huawei is  
7 trying to limit that plain and ordinary meaning.

8 This is not a case where you don't know where the  
9 reference signal is going. If you were in limbo and you had to  
10 wait and see where maybe it would go, then maybe it would make  
11 sense to wait and see where it goes before you put the data,  
12 but that's not the case in the '130 patent. '130 patent, it  
13 makes it very clear as a starting point, as a starting premise  
14 the reference signal always goes in that middle symbol.

15 So when you read this language, "mapping the data  
16 information to remaining symbols in the slot that are not used  
17 to map the reference signal," they're telling you where the  
18 data goes. Data goes everywhere that's not used to map the  
19 reference signal.

20 And I think that's my minute. Thank you, Your Honor.

21 **THE COURT:** Okay. Thank you.

22 **MR. BETTINGER:** Your Honor, in your tentative ruling,  
23 Huawei's motion for summary judgment B, noninfringement of the  
24 '350 patent, we'd like to address that briefly.

25 **THE COURT:** Okay.

1                   **MR. BETTINGER:** Your remark is that Prucnal, which is  
2 their expert's opinion that the UE's determine cell-specific  
3 ratio when they select quantization coefficients that  
4 correspond to the cell-specific ratio demonstrates a genuine  
5 issue of material fact. It might on DOE; it does not for a  
6 literal infringement case.

7                   The parties agree here that that cell-specific  
8 determination of a cell-specific ratio, it's not determined.  
9 The best they can argue --

10                  And if we could go to Slide 14. So we have the one book.  
11 It's a little bigger.

12                  **THE COURT:** I now have too many books in front of me,  
13 so I'm going to need to see it on the slide.

14                  **MR. BETTINGER:** We tried to do one book and I don't  
15 know if it helped.

16                  But you have to determine a cell-specific ratio.  
17 Slide 14. You have to determine a cell-specific ratio. The  
18 experts agree in this case we don't. The Huawei phones don't  
19 determine a cell-specific ratio.

20                  And at best what you have on Slide 16 is, well, you know  
21 what, they can come up with this thing called a quantization  
22 coefficient at Slide 16. The experts agree that's not the  
23 cell-specific ratio, but you could maybe figure out the  
24 cell-specific ratio from it; hence, the term "correspond."

25                  Well, that's fine. That's corresponding. But what's the

1 claim language? If you go back to 14, the claim language says  
2 "determine a cell-specific ratio." And it's just not done  
3 here.

4 So on this record, you just can't have a literal  
5 infringement. I will grant you, you could have a doctrine of  
6 equivalents. You could say, "Well, it's not determining it,  
7 but it's something that maybe corresponds," and so under a DOE  
8 analysis, perhaps you could get there; but on this record with  
9 Prucnal's admissions, you can't have literal infringement.

10 **THE COURT:** Okay.

11 **MR. BETTINGER:** The analogy -- trying to keep it  
12 simple, but if you go to Slide 17, the analogy is, say you have  
13 a circle and you say, "Hey, let's determine the area of the  
14 circle," and you know the radius. You have not determined the  
15 area of the circle even though that radius is going to  
16 correspond. You haven't done it. So it's a different step.

17 So our position would be that with respect to -- with B,  
18 under Huawei's MSJ, that the noninfringement of the '350  
19 patent, specific of literal infringement, that should be denied  
20 but that there would be an issue with respect to doctrine of  
21 equivalents.

22 **THE COURT:** Okay. Thank you.

23 **MR. BETTINGER:** Yeah, thank you.

24 **MR. LORDGOOEI:** Your Honor, Iman Lordgooei for  
25 Samsung.

1 I think the tentative got it exactly right. The claim  
2 language that we're looking at here -- and if we can put up our  
3 opposition to Huawei's MSJ slides and if we could go to  
4 Slide 18.

5 The claim language that we're dealing with is  
6 "determining," and what Huawei is trying to do is limit  
7 "determining" to calculate. They're saying that you have to --

8 **THE COURT:** You better slow down a little bit.

9 **MR. LORDGOOEI:** So they're saying that you have to  
10 calculate the cell-specific ratio. "Determining" is not  
11 limited to that. It hasn't been construed and the full range  
12 of the plain and ordinary meaning is you determine, you obtain  
13 this value.

14 And as we've presented through our expert testimony,  
15 through Huawei's documentation, we have several slides directed  
16 to Huawei's documentation, which I won't put up, but if you  
17 look through Slides 5 through 10, there's documents for  
18 Huawei's own phones that show this is how you determine a  
19 cell-specific ratio, the very same cell-specific ratio that's  
20 in the standard and the same cell-specific ratio that's in our  
21 patent.

22 And the way you do that -- because these are ratios,  
23 they're fractions, processors can't handle fractions. They  
24 need a way to represent fractions. The way they do that is  
25 through these quantization coefficients. And so by selecting a

1 particular quantization coefficient, that's exactly what you're  
2 doing; you're determining a cell-specific ratio. You're  
3 finding a value that corresponds to the cell-specific ratio,  
4 the claimed cell-specific ratio.

5 **THE COURT:** Okay. Thank you.

6 **MR. ZADO:** Your Honor, Ray Zado from Quinn Emmanuel on  
7 behalf of Samsung.

8 And I would like to address bullet point E from your  
9 tentative with respect to the motion for noninfringement with  
10 respect to the '825 patent.

11 **THE COURT:** Okay.

12 **MR. ZADO:** And if we could turn to Slide 64 of the  
13 presentation.

14 So I'd just like to make two high-level points,  
15 Your Honor. First, Huawei's motion on its face is premised  
16 strictly on the construction of the term "indicating" in the  
17 phrase "system information indicating a group of  
18 identifications," identifications or IDs.

19 In connection with this construction, first, Huawei's  
20 motion and its proposed construction completely ignore the  
21 concept of the plain and ordinary meaning. It's black letter  
22 law that, for example, you don't turn to the specification to  
23 narrow the plain and ordinary meaning unless there's either  
24 been a clear disavowal of claim scope or the patentee has acted  
25 as a lexicographer.

1       Huawei's motion makes no showing that either of those  
2 circumstances apply here; therefore, the term "indicating"  
3 should be afforded its plain and ordinary meaning, which is the  
4 same meaning to one of ordinary skill in the art as it would be  
5 to a layperson, just to indicate.

6       The second point that I'd like to make is that even if we  
7 assume under the narrowest strictures of Huawei's proposed  
8 construction, if you look at the details of the operation of  
9 the accused products and in particular the LTE standard, those  
10 products, there's at least a triable issue of fact as to  
11 whether the system information includes the group of IDs or the  
12 identifiers.

13       If we could turn to Slide 70, in the interest of time, to  
14 move things along.

15       So as I referenced earlier, the term "indicating" is  
16 something that's commonly understood. It has a widely accepted  
17 meaning, and there's no indication in the '825 patent of an  
18 intent by the patentee to deviate from this plain and ordinary  
19 meaning.

20       And the *Acumed* case, we would submit, is very instructive  
21 on this point. In that case the dispute was over the term  
22 "curved" in the phrase "curved shank" and whether that claim --  
23 how to interpret that claim term.

24       Now, the accused infringer in that case attempted to  
25 provide limitations or strictures on the term "curve" based

1 upon the operation of specific embodiments in the  
2 specification.

3 Now, this is very similar to the approach that Huawei is  
4 taking in connection with the term "indicating." They're  
5 referring strictly to operation of embodiments in the  
6 specification and then trying to narrow -- improperly narrow  
7 the scope of the term "indicating."

8 And the court in *Acumed* rejected that approach, and they  
9 said for terms that have these generally applicable meanings,  
10 like "curved," that everyone would know that's not -- operation  
11 of individual embodiments in the specification does not justify  
12 deviating from that plain and ordinary meaning.

13 Now, if I could turn to Slide 71, please.

14 And here this just provides the dictionary definition and  
15 the support for what the plain and ordinary meaning of  
16 "indicating" is. Now, this is a term that we as lawyers use;  
17 that everyone out in the world knows what "indicate" means.  
18 It's not something that needs a particular construction or  
19 definition, but this provides some guidance as to what that  
20 term might mean.

21 If we could turn to Slide 72, please.

22 And then this is the *Hill-Rom* case which specifically  
23 stands for the proposition that if you're going to use a  
24 specification to try and limit the scope of the plain and  
25 ordinary meaning of a claim term, you need to have -- the

1 standard is exact and you need to have some kind of disavowal  
2 or the patentee acting as its own lexicographer.

3       Huawei never addresses this case. They never attempted to  
4 distinguish it in their papers. So we would submit that this  
5 case is on all fours with the circumstance that we're facing  
6 with here.

7       Now, the one case that they do cite in their papers is the  
8 *Tap v. Owl* case, which is at 419 F.3d 1346, for the proposition  
9 that you can use the specifications to try and narrow these  
10 limitations.

11       Now, what Huawei ignores and doesn't mention in either its  
12 papers or its presentation is that in the *Tap* case, the court  
13 in looking at the specification found manifest phrases of  
14 exclusion. So, for example, it was with respect to the  
15 contents of a solution and the specification stated that the  
16 contents must include X. Furthermore, the specification  
17 included specific definitions of the present invention is X.

18       Those are manifest phrases of exclusion that justified  
19 limiting the scope of the plain and ordinary meaning in that  
20 case. Those circumstances are not present here and are found  
21 nowhere in the specification of the '825 patent.

22       If I could turn just quickly to Slide 73.

23       This just shows that every single passage that Huawei  
24 cites in its papers with respect to the operation of the system  
25 information are all identified explicitly as exemplary

1       embodiments. Therefore, Huawei's reliance on the operation of  
2       these to try and narrow the claim terms, it violates black  
3       letter claim construction law.

4           If I could turn to Slide 74, please.

5           And this just points out that there are actually several  
6       embodiments where the words include "with respect to system  
7       information including IDs." "System information including IDs"  
8       is not present. So that's specifically with respect to the  
9       embodiments of Figures 7 and 11.

10          Turn to 78, please.

11          And then I'd like to just briefly address for one minute  
12       that even if you adopt Huawei's proposed construction, there is  
13       still a material dispute of fact. And what you see in Huawei's  
14       papers is kind of a glossing over the operation of the actual  
15       systems and how system information -- what are the contents of  
16       the system information and what those contents mean.

17          Slide 80, please.

18          So, in particular, the system information includes two  
19       parameters: The number of RA preambles and the size of RA  
20       preambles. Now, what Huawei never addresses is how by  
21       including these parameters, this inherently includes the  
22       preamble indices; and this is explained on Slides 81 through 83  
23       of the presentation.

24          More particularly, for example, the example we provide is  
25       if the size of preamble groups A is 32 and, likewise, the

1 number of RA preambles is 32, in that circumstance the  
2 preambles are defined by the standard as being the preambles 0  
3 to 31. And that's -- the cite to the specification is included  
4 here as well.

5 So essentially the variable n32, when included in these  
6 parameters, means preambles indices 0 to 31. That is including  
7 a range of preamble IDs, which is exactly the way the  
8 specification describes it. If you can see the cite on page 84  
9 in column 5 in the specification.

10 Thank you.

11 **THE COURT:** All right. Thank you.

12 **MR. BETTINGER:** Thank you, Your Honor.

13 So we're on Huawei's motion for summary judgment E where  
14 you granted summary judgment as to literal and denied as to  
15 doctrine of equivalents. I think the remarks are addressed to  
16 the literal on the grant.

17 And in our slide book, which is the big one, Slide 28.

18 In *Fujifilm versus Motorola*, you dealt with a lot of these  
19 same issues, as I'm sure you recall. In the February 20  
20 opinion, I think you-all agree, "Hey, plain meaning sometimes  
21 maybe you do have to go back to the spec because a term can  
22 have different meanings. And so how is it being used here?"

23 And that's what we did. We followed that here, and on  
24 Slide 29 and as indicated in our papers and as you indicate in  
25 your ruling, that the specification does use the term

1 "includes." It means, "Hey, 'indicate' here means 'includes.'"

2 So I think that's the way the law works. That's how  
3 Judge Koh did it in *Apple*, Judge Tigar did it in *Icon*,  
4 Judge Gonzalez Rogers did it in *MediaTech*, and you did it, and  
5 you go back to the spec and that's right. So we would stand on  
6 your ruling. Thank you.

7 **THE COURT:** So, good.

8 I think you're up again if you want to take anything else  
9 on.

10 **MR. BETTINGER:** Yes, we do. Mr. Giardina will address  
11 the next issue.

12 **THE COURT:** I'll just say that you guys are in your  
13 lightning rounds in responses.

14 **MR. GIARDINA:** So, Your Honor, again, David Giardina  
15 on behalf of Huawei.

16 I wanted to take up your rulings on Huawei's motion to  
17 strike legal conclusions from their FRAND experts and then the  
18 analog to that on their motion to exclude what they  
19 characterized as opinions of French law by our experts  
20 Mr. Lasinski and Dr. Padilla.

21 I don't -- I mean, to be clear, Your Honor, we're  
22 obviously prepared to abide by the notion that the experts  
23 oughtn't be offering legal conclusions insofar as we sought to  
24 strike that from theirs, but I did have just some questions and  
25 was looking for some clarification so that we could understand

1 the parameters of that and see if there was some issue that we  
2 wanted to clarify in large part because their motion was  
3 directed to a panoply of paragraphs in our experts' reports  
4 many of which have either direct analogs in their, you know,  
5 their expert reports, our guys are doing exactly the same  
6 thing; and in other cases where we're responding, it's in the  
7 rebuttal phase where we're responding directly, and they're  
8 claiming those are objectionable. But, obviously, you know, as  
9 we stated in our papers, that oughtn't be the case. Either  
10 they're both out or they both get to do it.

11 And there's some asymmetry in the scope of our two motions  
12 because we were more targeted in what we did and they were  
13 broader, and we just want to make sure that whatever rule  
14 applies applies equally to both sides' experts.

15 In particular, there were a few kind of variants in their  
16 motion that I wanted to understand whether in your view it was  
17 a legal conclusion.

18 **THE COURT:** All right.

19 **MR. GIARDINA:** The first was whether the experts would  
20 be permitted to state their understanding of the meaning of the  
21 terms "fair," "reasonable," and "nondiscriminatory." You know,  
22 I think all four experts do it. They actually agree except  
23 with respect to "nondiscrimination," I think. There's not much  
24 daylight between them on the other issues.

25 But I hate to ask Your Honor --

1                   **THE COURT:** You know, it's fair for you to ask. I may  
2 not answer. But where in specific are you referring to in the  
3 tentative?

4                   **MR. GIARDINA:** Sure.

5                   **THE COURT:** With which experts are you concerned  
6 about?

7                   **MR. GIARDINA:** Yeah. So I am specifically referring  
8 to Samsung's motion to partially exclude, so this was page 3 of  
9 the tentative --

10                  **THE COURT:** Yeah.

11                  **MR. GIARDINA:** -- subpart B; and the ruling, the  
12 tentative ruling is grant in part, no legal conclusions,  
13 including whether the parties acted in good faith.

14                  **THE COURT:** So I was really focused on the good faith  
15 part of the opinions --

16                  **MR. GIARDINA:** I see.

17                  **THE COURT:** -- from the briefing, and it seemed to me  
18 that experts can opine on specific terms but then to make --  
19 draw the conclusion at the end of all that, "Oh, and so Huawei  
20 was acting in good faith," that, I think, is something for the  
21 jury I think in light of the specific information that the  
22 expert would have a basis to opine on.

23                  **MR. GIARDINA:** All right. That's very helpful to  
24 understand, Your Honor. Just a couple of questions in that  
25 vein.

1       Our expert Dr. Padilla, as their experts do, analyzes the  
2 parties' negotiations, not as a substitute for fact testimony  
3 but he's got to, you know, take as a given the facts as he  
4 understands them, and he expresses conclusions in sort of two  
5 ways.

6       He says in one respect this conduct is consistent with a  
7 party being a willing licensor or an unwilling licensor, and  
8 that's one sort of way he expresses that view. And that's, you  
9 know, kind of derived from a literature in the standard  
10 essential patent area where that is the language being used in  
11 relation to deciding whether a party is entitled or not  
12 entitled to injunctive relief. So he's kind of applying that  
13 framework, and he defines how he means it.

14       I don't take that to be equivalent to good faith or bad  
15 faith. He's not really expressing their state of mind. He's  
16 using it in an objective sense using criteria that he set  
17 forth. I don't know if that's consistent with your ruling or  
18 not.

19           **THE COURT:** Generally, and it may be that the best way  
20 of dealing with those specifics, to the extent that I'm not  
21 explicit enough in this order, is to deal with them in  
22 *motions in limine*. If there's a concern, you know, about going  
23 too far, I would think about that.

24           **MR. GIARDINA:** All right. I think with that,  
25 Your Honor, you know, we're fine. I mean, we may -- because of

1 this asymmetry in the styling of the motions, we may come back  
2 to you on this issue on *motions in limine*; but as long as  
3 that's not going to be perceived to be improper, then we'll  
4 take that issue up later.

5 **THE COURT:** Generally, no. If I'm specific enough in  
6 my order, then, yes.

7 **MR. GIARDINA:** All right. Thank you, Your Honor.

8 **THE COURT:** All right, thank you.

9 **MS. MAROULIS:** Your Honor, this is Victoria Maroulis,  
10 counsel for Samsung.

11 I'll briefly address Mr. Giardina. We agree with the  
12 Court's ruling excluding opinions on French law from Huawei's  
13 experts. In particular, there's a whole section in  
14 Mr. Padilla's report where he purports to rebut the French law  
15 expert even though he's not French law expert himself.

16 And I understand the Court to bar the experts from talking  
17 about good faith, something the jury would opine on, as fact  
18 finding. For example, Mr. Padilla has a number of references  
19 in his report to Samsung impermissibly delaying or protracting  
20 the negotiations and other terms where he goes from being an  
21 expert opining on something to being an advocate essentially or  
22 fact finder.

23 **THE COURT:** Don't make assumptions. You've maybe gone  
24 a little too far in what you think I think with respect to  
25 that. So I'm really -- what I've been focused on are the very

1 sort of big picture, end-of-the-day conclusions, the summing up  
2 of things for the jury. I worry about experts doing that.

3 But when they come to specific things that they're talking  
4 about, specific items, I don't -- there are things that experts  
5 do that can help a jury understand, and I think that that's  
6 fine.

7 And with the French law business, a lot of what  
8 Mr. Padilla was saying didn't seem to me to have to do with  
9 French law. He was talking about, you know, the general  
10 understanding of those terms.

11 So just don't say, "Well, you said it's going to be X,"  
12 because that's not -- X will be what I write, but I'm trying to  
13 clarify this for you.

14 **MS. MAROULIS:** Understood, Your Honor.

15 And with respect to Huawei's motion to strike Samsung's  
16 experts, you know, experts routinely rely on legal principles  
17 that are given to them in the infringement context and validity  
18 context and damages. So Dr. Hausman and others that were  
19 addressed in the motion merely relied on the law that was  
20 provided by counsel as is done in most cases.

21 I don't believe there were any other points raised in  
22 Mr. Giardina's presentation that need to be addressed but I'm  
23 happy to.

24 **THE COURT:** Thank you.

25 **MR. BETTINGER:** Given the time allocation,

1 Your Honor --

2                   **THE COURT:** Yeah, I think Samsung's down to two  
3 minutes so I was really thinking you'd be responding at this  
4 point to everything. If there's -- but if you want to use your  
5 two minutes another way, come on up.

6                   **MS. DUCCA:** Your Honor, I have 30 seconds --

7                   **THE COURT:** Come on up.

8                   **MS. DUCCA:** -- 30 seconds to address Huawei's *Daubert*  
9 on Dr. Lyon with respect to position information.

10                  Mr. Malmberg is giving you one more book.

11                  I encourage you to look at Slides 16 and 17 that explain  
12 why Dr. Lyon's interpretation is consistent with the  
13 interpretation one of ordinary skill in the art would have in a  
14 plain meaning of the term "position information."

15                  But I also want to point out the paragraphs that  
16 Your Honor identified in the tentative ruling are very  
17 overinclusive, and there's quite a bit of opinions in there  
18 that don't relate to position information. It's more  
19 background.

20                  What we've done is prepared a highlighted version of the  
21 expert reports with those paragraphs in there with the parts  
22 that we believe relate to position information highlighted. If  
23 I may hand this up and to opposing counsel.

24                  **THE COURT:** You may definitely do that.

25                  **MS. DUCCA:** And we will also file this on ECF if it

1 would be helpful to you. I'm sorry, on PACER.

2 **THE COURT:** Thank you.

3 **MS. DUCCA:** And that's all I have, Your Honor, unless  
4 you have any questions.

5 **THE COURT:** None.

6 **MS. DUCCA:** Thank you, Your Honor.

7 **MR. BETTINGER:** Nothing from us, Your Honor. We agree  
8 with your ruling.

9 **THE COURT:** Okay. Do you have any other matters that  
10 you wanted to raise?

11 **MR. BETTINGER:** Yes, Your Honor.

12 **THE COURT:** Mr. Lewis, go ahead.

13 **MR. BETTINGER:** We have the '105 you wanted to  
14 address. Mr. Lewis is going to do that, and we have one issue  
15 on the '825 where you agreed with us but you didn't know what  
16 to strike so we just wanted to touch on that.

17 **MR. LEWIS:** We'll help you with that, Your Honor.

18 Let's go back to 88.

19 So you mentioned at the beginning of this hearing the '105  
20 patent and whether we had disclosed the reduction to practice  
21 via the simulations.

22 **THE COURT:** Right.

23 **MR. LEWIS:** So I just wanted to quickly show you that  
24 we did.

25 So Slide 108 shows the part of the invalidity contentions

1 that we have filed with respect to this. They're supplemental  
2 but there was an agreed supplement, and this is Samsung's  
3 motion for summary judgment reply Exhibit D. And in there we  
4 explained that Motorola conceived of the invention disclosed in  
5 the document at least by the date there -- this, I think, might  
6 be under seal so I won't repeat it.

7 **THE COURT:** Okay.

8 **MR. LEWIS:** -- and then also reduced it to practice.  
9 And so we did disclose that.

10 If we could go to -- oops. I have the clicker.

11 On 89 we actually disclosed in the claim chart the actual  
12 part of the Motorola draft that shows the results of the  
13 computer simulation, and that was in our claim chart as well.

14 I think both parties' claim charts had no analysis. They  
15 just, you know, said that the element was met and then quoted,  
16 or copied in the case of these figures, material from the prior  
17 art. That's exactly what we did. It shows what we're relying  
18 on now, and so, Your Honor, it was disclosed.

19 If you have any more questions on that, I'm happy to  
20 answer them, otherwise I have nothing more.

21 **THE COURT:** Okay. Thank you, Mr. Lewis.

22 **MR. LEWIS:** Thank you.

23 **MR. LORDGOOEI:** Your Honor, very briefly, so  
24 counsel -- Iman Lordgooei for Samsung -- counsel for Huawei  
25 just showed you an excerpt from their invalidity contentions

1 that showed the Motorola draft. They didn't show the  
2 simulations. To this day, we don't have any evidence of these  
3 purported simulations that have been run.

4 So, first of all, even if you find that they're timely in  
5 bringing this new opinion forward, it still fails because the  
6 only evidence that they've presented in their opposition brief  
7 to our SJ was inventor testimony and a copy of the Motorola  
8 draft, which is the inventor's own document. There's zero  
9 corroboration of any of these simulations, what the simulations  
10 entailed. There's only inventor testimony and these purported  
11 results. So that's that one issue.

12 The second issue is, despite them including a screen shot  
13 from the Motorola draft document itself in their invalidity  
14 contentions, there's zero indication of the reduction to  
15 practice they intended to rely on being the simulations.

16 And I think if you look in our -- if you still have our  
17 summary judgment slide deck, on Slide 64, this was a new  
18 theory -- and let's not put this up because there may be some  
19 confidential issues -- but this was a new theory that they  
20 raised for the first time in their opposition, which I think  
21 Your Honor recognized in your tentative.

22 We asked their expert during expert discovery (reading):

23 "What is your theory of reduction to practice? It's  
24 the fact that Motorola filed a provisional application;  
25 correct?"

1 His testimony on our Slide 62 was (reading) :

2 "Yes, I'm relying on the provisional patent."

3 We asked him (reading) :

4 "What -- these other paragraphs in your report that  
5 talk about these simulations, what do those relate to?  
6 Those relate to the diligence between conception and  
7 reduction to practice; correct?"

8 He says on our Slide 65 (reading) :

9 "Yes, that's what it relates to, the diligence."

10 So we were on zero notice of this purported new theory  
11 until we got their opposition brief.

12 **THE COURT:** Okay. Thank you.

13 **MR. LEWIS:** Your Honor, he mentioned a new issue I'd  
14 just like to deal with, corroboration.

15 If I could go to Slide 86.

16 It's not correct that the corroboration actually needs to  
17 be prior art. So the corroboration includes the Motorola draft  
18 itself; the 3GPP submission itself, which is a public document,  
19 I think the next day after the alleged invention date; and the  
20 patent application. And all of that can be corroboration. It  
21 doesn't have to be before the priority date to corroborate the  
22 action that occurred before the priority date.

23 And that's all I have.

24 **THE COURT:** Okay. Thank you.

25 **MR. BETTINGER:** I think, Your Honor, I'm happy to tell

1 you the last issue. This is Huawei's *Daubert* motions and it's  
2 G, the '825 patent, Huawei's *Daubert* motions on page 2, the G;  
3 and your tentative says (reading):

4 "I agree with Huawei but see no basis for striking  
5 paragraphs."

6 And just to orient us, again, in the big book, on 146 this  
7 issue is about "without checking the downlink channel" is the  
8 phrase.

9 **THE COURT:** Uh-huh.

10 **MR. BETTINGER:** And what the testimony was throughout  
11 the case was, there's this thing called the PDCCH, physical  
12 downlink control channel, PDCCH, and there was one of them and  
13 everybody agreed there was one of them. On page 147 of the  
14 slides, Valenti in his infringement report says, "Yeah, there's  
15 one, the physical downlink control channel."

16 And then all of a sudden when we articulated a  
17 noninfringement position, "Oh, but there's different portions  
18 of the PDCCH," and this issue came up. And it's, like, this is  
19 new. That wasn't your position going through. There was one  
20 PDCCH. We all agreed on that, and you admit that you do check  
21 that PDCCH so, okay, you can't change that.

22 So then I think you say, "I agree with Huawei but I don't  
23 see what to strike," and so I was going to suggest to  
24 Your Honor there are two paragraphs that should be stricken --

25 **THE COURT:** Okay. Good.

1                   **MR. BETTINGER:** -- and they're at ECF 327-20,  
2 Exhibit 23, which is Valenti's infringement report. And we can  
3 put that up on the screen. And it's paragraph 479.

4                   Do you have that?

5                   Paragraph 479 where he opines (reading) :

6                   "The HiSilicon documentation" -- and HiSilicon is one  
7 of the Huawei chips -- "source code, and testimony support  
8 my opinion that the HiSilicon-Based Accused  
9 Instrumentalities" -- the Huawei phones -- "each perform  
10 after transmitting of the first uplink signal, waiting for  
11 a predetermined delay duration without checking a downlink  
12 channel, and therefore... literally meet claim  
13 limitation."

14                  I submit to you that "without checking a downlink channel"  
15 is not satisfied and that paragraph should be stricken.

16                  **THE COURT:** Okay.

17                  **MR. BETTINGER:** And then there's a similar one for the  
18 Qualcomm chips at paragraph 486 of the same report and, again,  
19 that's Exhibit 23 to ECF 327.20, and it's the same language  
20 using the Qualcomm base.

21                  But we agree with you agreeing with us, and we're just  
22 trying to say, "Hey, we think those are the two paragraphs that  
23 should be stricken as a result of that ruling."

24                  **THE COURT:** All right. I'll look at that. Thank you,  
25 Mr. Bettinger.

1                   **MR. BETTINGER:** With that, we don't have anything else  
2 but maybe a housekeeping order.

3                   **THE COURT:** Yeah. We'll do that, but I'm --

4                   **MR. BETTINGER:** I'm sorry.

5                   **THE COURT:** -- going to hear on the lightning round.

6                   **MR. ZADO:** And if we could turn to the slides on the  
7 motion to strike.

8                   And this is really simply an issue of claim construction  
9 and courts have routinely found that parties, when there's  
10 differences of claim construction, that's not a difference --  
11 that's not a defect in methodology that supports excluding  
12 opinions based on a *Daubert* challenge, for example.

13                  And if we could turn to Slide s 112 to 113.

14                  And this just explains -- these slides just provide  
15 Dr. Valenti's testimony that explains and confirms his opinion  
16 that there isn't a single channel, the PDCCH random access  
17 channel, that is not checked for the messages that are carried  
18 on that particular channel. There's a -- he testified further  
19 that there's a separate channel called the paging PDCCH, which  
20 are two different channels.

21                  Now, to correct counsel for Huawei's statement that there  
22 was no reference or this is a surprise, there were separate  
23 PDCCHs. In particular, if you turn to the Valenti deck,  
24 Exhibit H, which cites to the 36.213 3GPPC standard, it  
25 specifically defines that there are multiple PDCCHs.

1       And if you notice that Huawei has not submitted any  
2 testimony or evidence from its experts saying that there's only  
3 one channel. So they're relying on, first, a misstatement and,  
4 second, there's no evidence to support that misstatement.

5       And with respect to the two paragraphs that they wish to  
6 exclude, those two paragraphs simply state "without checking a  
7 downlink channel." There's nothing with respect to the  
8 particular opinion as to whether there's one or more than one  
9 channels that's set forth in those two paragraphs. So we don't  
10 see a basis for why those two paragraphs should be excluded.

11           **THE COURT:** Okay. Thank you.

12       All right. First of all, thank you for your argument and  
13 I'm sorry that I didn't let you argue as long as some of you  
14 would have liked. I let Mr. Verhoeven argue as long as he  
15 wanted, but everybody else, so thank you for this and thanks  
16 for all the homework that you've given me.

17       You know, there's a reason why there are page limits in  
18 briefs. It's not so that you can then exceed them with all of  
19 these things, but I will say that I appreciate them.

20       So housekeeping?

21           **MR. BETTINGER:** Housekeeping, yeah. Your Honor, you  
22 mentioned it at the beginning of, like, where are we going, you  
23 know, what's the path here. We think it would benefit the  
24 parties to maybe have a status conference where we can discuss  
25 that.

1       There's been, you know, some developments in the case. I  
2 think when you see some of the things that have happened and  
3 the direction we're headed, we might be able to get some more  
4 clarity for the parties as to how best to proceed here and  
5 wondered if we could have a status conference in the near  
6 future.

7           **THE COURT:** Okay.

8           **MR. VERHOEVEN:** I'm not sure I know what counsel is  
9 talking about. I think perhaps we should talk -- he should  
10 talk to me first and --

11           **THE COURT:** Well, I would encourage that. I'm open to  
12 having a status conference, and so if you --

13           **MR. BETTINGER:** Mid-September?

14           **THE COURT:** Yes. So pick a Tuesday, any Tuesday, in  
15 the next month as long as that -- and then give me a week to  
16 digest whatever it is that you're looking at.

17           **MR. BETTINGER:** All right.

18           **THE COURT:** Just so that you know, I'm not going to be  
19 around a lot in October. I'm going to be in trial starting  
20 October -- the last week in August for a few weeks so -- but if  
21 you want to do that, I'm happy to do that.

22           Two things have come to my mind. The first I was reminded  
23 of by Mr. Verhoeven in almost the second sentence that he said  
24 today. There is an extraordinary amount of information that  
25 the parties have been trying to keep confidential --

1                   **MR. VERHOEVEN:** Yes, uh-huh.

2                   **THE COURT:** -- in this case; and while I am  
3 sympathetic to the desires of clients to keep important  
4 information confidential, this is a court of public record and  
5 I am not -- you're going to have to figure out how this case  
6 will be tried in a way that preserves what I think is the most  
7 important thing, which is that this is a court of public  
8 record.

9                   **MR. VERHOEVEN:** Yes, Your Honor. Understood. And  
10 having just tried a case in front of Judge Alsup, I have some  
11 thoughts about how to do that.

12                  **THE COURT:** Okay. And anything that works for him on  
13 this topic, I have a hunch will work for me.

14                  Okay. So that's the first thing.

15                  And then the second thing -- and this may or may not feed  
16 into what you're thinking about, Mr. Bettinger -- is what are  
17 you doing with respect to trying to resolve the case, and is  
18 there anything that I can do to be of help to you?

19                  **MR. VERHOEVEN:** I think there's a mediation coming up.

20                  What is the date?

21                  **MS. MAROULIS:** September 17th, Your Honor, we're  
22 meeting with Judge Westmore.

23                  **THE COURT:** Okay. All right. So that's good. That's  
24 a good thing.

25                  **MR. VERHOEVEN:** Just so you know, so that's one event.

**THE COURT:** That's one event.

**MR. VERHOEVEN:** But we'll take that under consideration.

**THE COURT:** So that's -- so I'm glad -- thank you for telling me that.

I just have wondered from your first appearance here what this course for you titans of industry and wise counselors is, and I know it can't be having a jury trial in my court. I just know that. That doesn't -- it's entirely up to you and you can play whatever games and strategies you want to play out, but it's just not smart. It's just not. So help yourselves.

**MR. VERHOEVEN:** We hear you, Your Honor. I hear you.

**MR. BETTINGER:** I don't want to get into the specifics now, but there's some -- you know.

**THE COURT:** So I 'm here.

**MR. BETTINGER:** Okay. We'll find a Tuesday that you're open.

**THE COURT:** I'd be delighted to see you and anything I can do, let me know.

MR. BETTINGER: Thank you, Your Honor.

**MR. VERHOEVEN:** Thank you, Your Honor.

**MR. BETTINGER:** We appreciate all your time.

**THE COURT:** Yes. Thank you.

(Proceedings adjourned at 4:54 p.m.)

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3 **CERTIFICATE OF REPORTER**

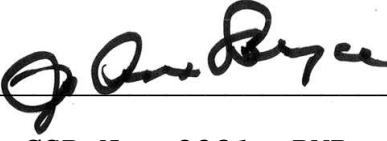
4 I certify that the foregoing is a correct transcript  
5 from the record of proceedings in the above-entitled matter.

6

7 DATE: Friday, August 24, 2018

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12 Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR  
13 U.S. Court Reporter

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